

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Ernest W. Sturges, Jr., Esq.  
Goldman, Tiseo & Sturges, P.A.  
701 JC Center Court, Suite 3  
Port Charlotte, Florida 33954

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Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$18.50  
Deputy Clerk SPINNAGE  
#1

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**CERTIFICATE OF AMENDMENT TO**  
**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS**  
**WEST CAPE ESTATES**

I HEREBY CERTIFY that the following amendment to the Declaration of Protective Covenants and Restrictions of West Cape Estates was duly adopted by the Association membership at the duly noticed annual members' meeting of the Association on the 4<sup>th</sup> day of October, 2012. Said amendment was approved by a property percentage of voting interests of the Association. The Declaration of Protective Covenants and Restrictions is recorded at O.R. Book 4134, Pages 4354 et. seq., of the Public Records of Lee County, Florida.

**Article 1.9, Declaration of Protective Covenants and Restrictions** is hereby amended to read as follows:

1.9 "Community Association" or "Association" means West Cape Estates Community Association, Inc. A Florida corporation not for profit, which is ~~NOT a condominium association and is not intended to be governed by Chapter 718720, Florida Statutes, the Condominium Act, Florida Statutes~~ Florida Homeowners Association Act, as same may be amended from time to time.

**Article 13.5.2, Declaration of Protective Covenants and Restrictions** is hereby amended to read as follows:

13.5.2 After Turnover Date. After the Turnover Date, these Protective Covenants may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots within the Property present in person or by proxy at a duly called meeting for that purpose; together with (ii) the approval or ratification of a majority of the Board of Directors. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots within the Property present in person or by proxy at a duly called meeting for that purpose may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular annual or special meeting of the Association called and held in accordance with the Bylaws, or by written action in accordance with the provisions of the Bylaws, to be evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

Executed this 4<sup>th</sup> day of October, 2012, at Lee County, Florida.

West Cape Estates

By: [Signature]  
Name: Michael Mitchell  
Its: President

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2012, by Michael Mitchell, who is personally known to me or produced \_\_\_\_\_ as identification.

SEAL



Melissa G Casta  
NOTARY PUBLIC

Melissa G Casta  
Printed name of notary

By: [Signature]  
Name: William Thompson  
Its: Secretary

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2012, by William Thompson, who is personally known to me or produced \_\_\_\_\_ as identification.

SEAL



Melissa G Casta  
NOTARY PUBLIC

Melissa G Casta  
Printed name of notary

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Ernest W. Sturges, Jr., Esq.  
Goldman, Tiseo & Sturges, P.A.  
701 JC Center Court, Suite 3  
Port Charlotte, Florida 33954

INSTR # 2012000232823, Pages 3  
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Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$27.00  
Deputy Clerk SPINNACE  
#2

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**CERTIFICATE OF AMENDMENT TO**  
**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS**  
**WEST CAPE ESTATES**

I HEREBY CERTIFY that the following amendment to the Declaration of Protective Covenants and Restrictions of West Cape Estates was duly adopted by the Association membership at the duly noticed annual members' meeting of the Association on the 4<sup>th</sup> day of October, 2012. Said amendment was approved by a property percentage of voting interests of the Association. The Declaration of Protective Covenants and Restrictions is recorded at O.R. Book 4134, Pages 4354 et. seq., of the Public Records of Lee County, Florida.

**Article 1.37, Declaration of Protective Covenants and Restrictions** is hereby amended to read as follows:

1.37 "Improved Property" or "Improved Properties" means a home or lot or homes or lots which have been improved by the construction of a single family residence and are substantially complete as evidenced by the issuance of certificate of occupancy by the appropriate governmental agency.

**Article 1.38, Declaration of Protective Covenants and Restrictions** is hereby amended to read as follows:

1.38 "Basic Landscaping" means the live oak and royal palm trees installed by the Declarant/Developer at time of construction and maintained or replaced by the Association. Such landscaping is irrigated by the same irrigation system as the common property.

**Article 6.1., Declaration of Protective Covenants and Restrictions** is hereby amended to read as follows:

**6.1.Determining Amount of Assessments**

The Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Community Documents. ~~Each Lot within the Property shall be assessed its pro-rata portion (1/28th) of the Operating Expenses which shall be the "Individual Assessment" as to each Lot.~~ Therefore, the Operating Expenses shall be divided as follows:

6.1.1 All Common Area landscaping and maintenance, and HOA administration expenses shall be divided across by the total of the number of Lots, twenty-eight (28).

6.1.2. Expenses associated with the mowing of vacant lots shall be divided across the total number of Vacant Lots.

6.1.3. Expenses associated with landscaping maintenance of Improved Properties shall be divided across the total number of Improved Properties.

~~in West Cape Estates, regardless of whether the Home is completed, partially completed or vacant. Notwithstanding anything in the Community Documents to the contrary, any assessment for legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense which is properly the subject of a Special Assessment and not the subject of a regular Individual Assessment.~~

**Article 7.6, Declaration of Protective Covenants and Restrictions** is hereby amended to read as follows:

7.6 Maintenance of Owners' Landscaping and Swimming Pools/Spas through West Cape Estates

A. Basic Landscaping Adjacent to Roadways: Operating Expenses shall include all expenses necessary to keep, maintain and replace the basic landscaping on each Owner's Lot, including sprinkler systems, lawn, basic shrubbery and street trees plants by Declarant on each Owner's Lot, which are adjacent to the roadway. The cost of which shall be paid pro-rata by all of the Lot Owners of West Cape Estates.

B. Maintenance of Improved Property: In an effort to provide for fewer entries in to the community by non-residents, and to provide a uniform high standard of maintenance for all property within the community, the Association shall provide for home mowing; home lawn fertilizer and pest control and home fertilizer for plants, trees and shrubs for each improved property within West Cape Estates, contract with one or more lawn and landscape maintenance services; the cost of which shall be considered an Operating Expense for Improved Properties. Regarding the Owners' trees and shrubs shrubbery and irrigation systems, the Owners shall have the choice of: (i) maintaining it themselves (i.e., without contracting an outside service); or (ii) paying the Association's contract landscape service provider(s) an additional sum to provide the additional service. In the event the Owner fails to maintain in accordance with the Community Standards, then the Association shall have the right, but not the obligation, upon fifteen (15) days' written notice to the responsible party, to enter upon the subject property for the purpose of performing the maintenance and/or replacement described in such notice to the Owner. The Association's cost of performing such maintenance and/or replacement and the expense of collection (including, but not limited to, Legal Fees) shall be assessed by the Association against the Owner as an Individual Expense Assessment. The Board of Directors has the authority and discretion to change the responsibility for maintaining owners trees and shrubs. Owners trees and shrubs and the surrounding landscaping beds may be maintained as part of a total home/lawn/tree/shrub fertilizer and pest control program, the cost of which shall be considered an Operating Expense for Improved Properties, if approved by the Board of Directors.

Executed this 4<sup>th</sup> day of October, 2012, at Lee County, Florida.

West Cape Estates

By: [Signature]

Name: Michael Mitchell

Its: President

STATE OF FLORIDA

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2012, by Michael Mitchell, who is personally known to me or produced \_\_\_\_\_ as identification.

SEAL



Melissa G Casta  
NOTARY PUBLIC

Melissa G Casta  
Printed name of notary

By: [Signature]

Name: William Thompson

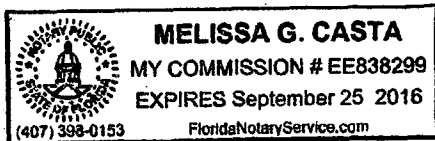
Its: Secretary

STATE OF FLORIDA

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2012, by William Thompson, who is personally known to me or produced \_\_\_\_\_ as identification.

SEAL



Melissa G Casta  
NOTARY PUBLIC

Melissa G Casta  
Printed name of notary

321.00



INSTR # 6062962  
DR BK 04134 Pgs 4354 - 4424; (71pgs)  
RECORDED 12/02/2003 12:14:55 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY, FLORIDA  
RECORDING FEE 321.00  
DEPUTY CLERK V Fuller

This Instrument Prepared by and Return to:  
Jane Yeager Cheffy, Esq. ✓  
2375 Tamiami Trail North  
Suite #310  
Naples, FL 34103

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SPACE ABOVE THIS LINE FOR PROCESSING DATA

(21)

**DECLARATION OF PROTECTIVE  
COVENANTS AND RESTRICTIONS  
FOR  
WEST CAPE ESTATES**

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR WEST CAPE ESTATES ("Protective Covenants") is made this 18 day of November, 2003, by WEST CAPE DEVELOPMENT GROUP, L.L.C., a Florida limited liability company, its successors and assigns ("Declarant"), joined by WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC., a Florida corporation not-for-profit ("Community Association").

**WHEREAS**, Declarant is the owner in fee simple of the real property more particularly described on Exhibit A ("Property") attached hereto and made a part hereof; and

**WHEREAS**, Declarant wishes to subject the Property to the provisions of these Protective Covenants; and

**WHEREAS**, Declarant, desires to develop a community to be known as "WEST CAPE ESTATES" as hereinafter set forth; and

**WHEREAS**, Declarant desires to provide for the preservation of the values and amenities of WEST CAPE ESTATES as are hereby or as may be hereafter established; and

**WHEREAS**, Declarant has deemed it desirable for the efficient preservation of the values and amenities established to create a corporation known as West Cape Estates Community Association, Inc.,

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which corporation has joined in these Protective Covenants and to which there have been and will be delegated and assigned: (i) certain powers and duties of ownership, operation, administration, maintenance and repair of portions of the Property, including, but not limited to, the "Common Property" (as hereinafter defined); (ii) the enforcement of the covenants and restrictions contained herein; and (iii) the collection and disbursement of the "Operating Expenses" (as hereinafter defined).

**NOW, THEREFORE**, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any portion thereof, their heirs, successors and assigns.

## 1. EXPLANATION OF TERMINOLOGY

The following words and phrases used in these Protective Covenants (unless the context should clearly reflect another meaning) shall have the following meanings:

1.1. "Articles" mean the Articles of Incorporation of the Association, which are attached hereto as Exhibit D and any and all amendments thereto.

1.2. "Assessments" mean the assessments for which all Owners are obligated to the Association, and include:

(i) "Individual Assessments" which include the assessments levied for the payment of Operating Expenses, as more particularly described in Paragraph 6.1 hereof;

(ii) "Individual Expense Assessments" as more particularly described in Paragraph 6.4 hereof; and

(iii) "Special Assessments" which are levied by the Association for such purposes as are described in Paragraph 6.3 hereof.

1.3. "Board" means the Board of Directors of the Association.

1.4. "Bylaws" mean the Bylaws of the Association, which are attached hereto as Exhibit E and any and all amendments thereto.

1.5. "City" means the City of Cape Coral, Florida.

1.6. "Committee" means the Architectural Control Committee described in Paragraph 8.2 herein.

1.7. "Common Property" means that portion of the Property and areas adjacent thereto, as more particularly set forth on Exhibit C hereto, and includes, but is not limited to, the Community Amenities and those areas described in Paragraph 2.2.2 hereof.

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1.8. "Community Amenities" means that portion of the Common Property consisting of a tennis court and activity building, and such other recreational amenities as may be constructed on the Common Property, or elsewhere as may be designated by the Declarant or the Association, intended for use by the Owners of West Cape Estates and to be maintained by the Association.

1.9. "Community Association" or "Association" means West Cape Estates Community Association, Inc., a Florida corporation not for profit, which is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

1.10. "Community Documents" mean in the aggregate these Protective Covenants, the Articles, Bylaws and Rules, and all of the instruments and documents referred to therein and executed in connection with West Cape Estates.

1.11. "County" means Lee County, Florida.

1.12. "Declarant" means West Cape Development Group, L.L.C., a Florida limited liability company, its successors, grantees and assigns. An Owner shall not, solely by the purchase of a Lot, be deemed a successor or assign of Declarant or of the rights of Declarant under the Community Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

1.13. "Entry Gate" means the gate at the entrance to West Cape Estates, which is part of the Community Amenities to be maintained by the Association.

1.14. "Home" or "Lot" means a detached single family residential unit in the Property intended as an abode for one family.

1.15. "Improvement" means any Home, building, structure or improvement of any kind including, but not limited to, any wall, fence, landscaping, planting, topographical feature, mailbox, swimming pool, tennis court, screen enclosure, driveway, sidewalk, sewer, drain, water area, outside lighting or sign and any alteration or addition thereto.

1.16. "Institutional Mortgagee" means any lending institution having a first mortgage lien upon a Lot, including, but not limited to, any of the following institutions or entities: (i) a federal or state savings and loan association or bank or a life insurance company, or bank or real estate investment trust, or a mortgage banking company or any subsidiary thereof, or a national banking association chartered under the laws of the United States of America; or (ii) any and all investing or lending institutions ("Lender") which have loaned money to Declarant in order to enable Declarant to acquire, or construct Improvements upon, any portion of West Cape Estates and which holds a first mortgage upon such portion of West Cape Estates as security for such loan; or (iii) any pension or profit sharing funds qualified under the Internal Revenue Code; or (iv) the Veterans Administration ("VA") or the Federal Housing Administration ("FHA") or the Department of Urban Development or other lenders generally recognized in the community as an institutional lender; or (v) such other Lenders as the Board shall hereafter designate as such in writing which have acquired a mortgage upon a Lot; or (vi) any "Secondary Mortgage Market Institution" including Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and such other Secondary



Mortgage Market Institution as the Board shall hereafter designate as such in writing which has acquired a mortgage upon a Lot; or (vii) Declarant, its successors and assigns.

1.17. "Interest" means the maximum nonusurious interest rate allowed by law on the subject debt or obligation and if no such rate be designated by law, then eighteen percent (18%) per annum.

1.18. "Lake" means the water area within West Cape Estates designated as "Tract B", "Water Management Area" or "Lake" by the Declarant, either herein or on any plat or site plan of the Property.

1.19. "Legal Fees" mean (a) reasonable fees for attorney and paralegal services incurred in negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment proceedings; and (b) court costs through and including all trial and appellate levels and post-judgment proceedings.

1.20. "Lot" or "Home" means one or more of the platted portions of land into which West Cape Estates has been subdivided, upon each of which a Home has been or is intended to be constructed. Unless the context clearly requires a different interpretation, the term "Lot" shall be interpreted as if it were followed by the words "and the Home constructed thereon".

1.21. "Member" means a member of the Association as more particularly described in the Articles and includes all Owners.

1.22. "Operating Expenses" mean the expenses for which all Owners are liable to the Association as described in these Protective Covenants and include, but are not limited to, all expenses incurred by the Association in administering, operating, reconstructing, maintaining, financing, or repairing, but not replacing or improving, all portions of the Common Property including, but not limited to the storm water management systems, the easements for drainage and maintenance, the recreation areas, if any, and any and all Improvements thereon, as well as all personal property for which the Association has such obligation as set forth in these Protective Covenants, including the costs of administration of the Association. Operating Expenses do not include "losses" due to depreciation of common area assets, or other intangible expenses.

1.23. "Owner" means the owner or owners of fee simple title to a Lot and includes Declarant for so long as it owns fee simple title to a Lot. Owner shall not mean or refer to a holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure proceedings or by deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

1.24. "Plat" means the Plat of West Cape Estates which has been recorded in Plat Book 75 at Page(s) 74 through 76 of the Public Records of Lee County, Florida, as the same may be amended.

1.25. "Property" means the real property described on Exhibit A attached, which is subjected to the provisions of these Protective Covenants, including the Property, the Common Property, and any Additional Property added thereto by a duly executed supplement or amendment to these Protective Covenants recorded in the Public Records.

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West Cape Estates

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1.26. "Protective Covenants" means this document as the same may be supplemented and/or amended from time to time.

1.27. "Public Records" means the Public Records of Lee County.

1.28. "PDP" means and refers to the Planned Development Project created by the City of Cape Coral Ordinance 20-03 as adopted by the City Council of Cape Coral, Florida, on 3/03/03, as amended from time to time.

1.29. "Rules" mean collectively the rules which the Board may promulgate or impose and thereafter modify, alter, amend, rescind and augment any of the same with respect to the use, operation and enjoyment of the Property and any Improvements located thereon (including, but not limited to, establishing hours of such use and the manner of operation) and provided that no such Rules so promulgated shall be in conflict with the provisions of these Protective Covenants, the Articles or the Bylaws.

1.30. "Seawall" means the wall which lies along the boundary lines between Lots 1 through 16 and the waterway and/or the canal and which will be maintained by the individual Owners of Lots 1 through 16.

1.31. "Site Plan" means the preliminary site plan for West Cape Estates attached as Exhibit B hereto.

1.32. "Standards" means the set of aesthetic building restrictions promulgated by the Architectural Review Committee which shall regulate the following: (i) architectural design of Improvements including, but not limited to, design standards for any Home or other Improvement constructed within the Property; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior topography and landscaping; (v) exterior appurtenances relating to utility installation; (vi) signs and graphics, mailboxes and exterior lighting; (vii) building setbacks, pools and pool decks, side yards and related height, bulk and design criteria; (viii) pedestrian and bicycle ways, sidewalks and pathways; and (ix) all buildings, topography features, landscaping and Improvements on lands owned or controlled by the Association.

1.33. "Storm Water Management System" means the drainage areas, drainage easements, Lake, storm drains and catch basins at West Cape Estates which are intended to control or contain rainfall. The Storm Water Management System is located upon or adjacent to the Property, and is designed to serve the Property. The Association is responsible to operate and maintain the Storm Water Management System and has the power to assess the Owners in order to pay for such operation and maintenance.

1.34. "Tract" means any and all platted portions of West Cape Estates other than the Lots.

1.35. "Turnover Date" means the date that the Declarant relinquishes control of the Association, and shall be the earlier of three months after 90% of the Lots are sold, or such time as Declarant shall designate in writing to the Association, subject to the provision of these Protective Covenants and the Articles.

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1.36. "West Cape Estates" means the name given to the planned residential development being developed by Declarant on the Property in the County, in accordance with the "Plan for Development" set forth herein and as set forth in the Plat.

## **2. PLAN FOR DEVELOPMENT; LAND USE COVENANTS; CONVEYANCE OF THE COMMON PROPERTY**

### **2.1. Plan for Development**

2.1.1. Plan. Declarant intends to develop or cause to be developed upon the Property or portions thereof a planned residential community to be known as West Cape Estates, in accordance with applicable zoning regulations. West Cape Estates is intended to consist of single-family detached Homes totaling approximately twenty-eight (28) Homes on the Property, if all Homes are built as planned. Declarant reserves the right to increase or decrease the number of Homes, and to change the types of Homes, in the Property, and to increase or decrease the number of residential units in the Property in accordance with applicable law. Such increase(s), decrease(s), or changes shall not require an amendment to these Protective Covenants.

2.1.2. Declarant expressly reserves the right, as to the Property, to: (i) commence construction and development when Declarant so desires; (ii) develop the Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property in such manner as it, in its sole discretion, chooses.

2.1.3. Uses of Property. All portions of the Property shall be subject to the use limitations, restrictions and other provisions imposed thereon as may be set forth in these Protective Covenants. These Protective Covenants may restrict certain portions of the Property to specified uses, including, but not limited to, uses as residential property and property to be maintained as beautification areas, water management areas, recreation areas in a natural state, or for parking and drives.

2.1.4. Community Amenities. It is intended that the Community Amenities shall be owned and maintained by the Association. All members of the Association shall automatically be entitled to use the Community Amenities.

### **2.2. Land Use Covenants.**

In consideration of the benefits hereinafter contained and the payment of the various expenses referred to herein, Declarant does hereby declare and the Association agrees that portions of West Cape Estates shall be committed to land use as Residential Property and Common Property, as follows:

2.2.1. Residential Property. The Lots, as depicted on the Plat or a site plan of the Property shall be for residential and related uses only and shall be subject to the land use covenants impressed upon Residential Property as contained herein. No Lot or Tract shall be divided or subdivided nor shall one or more Lots be joined together with another Lot or Lots. No Owner shall inaugurate or implement any variation from, modification to, or amendment of the PDP or any other governmental plans, land development regulations, development orders or development permits applicable to the Property, or to any

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Lot or Tract, without the prior written approval of Declarant, which approval may be denied at the sole discretion of Declarant.

2.2.2. Common Property. The Common Property shall consist of those portions of the Property described on Exhibit C hereto, and shall additionally contain the Community Amenities and all portions of the Property designated as such by the Declarant or the Association, or depicted as such on the Plat or on a site plan of the Property. The Common Property shall be used for recreation, roadway, landscaping and drainage purposes as well as other proper purposes by the Association, the Owners, and their family members, guests, invitees and lessees in accordance with the Community Documents.

The portions of West Cape Estates described in this Paragraph 2.2.2. shall constitute the Common Property and shall be used solely in accordance with the covenants impressed upon the Common Property as follows:

2.2.2.1. Parking Area. The Parking Area is that portion of the Common Property depicted as such on the Plat as "Tract A" or "Recreation Area" that has been designated for parking. The Parking Area shall be maintained, administered and ultimately owned by the Association.

2.2.2.2. Roadway. The Roadway is that portion of the Common Property designated as such by Declarant or the Association, or on the Plat or site plan of the Property, as "Tract C" or "West Cape Estates Circle." (The Roadway does not include driveway areas unless specifically so designated.) The Roadway shall be used as a private road by Declarant, the Association and the Owners, their family members, guests, lessees and invitees. The Roadway shall be maintained, administered and ultimately owned by the Association. The Roadway includes the entrance areas and rights-of-way.

2.2.2.3. Open Space. Open Space is the portions of the Common Property designated by the Declarant or the Association, or on the Plat or a site plan of the Property as Open Space, to be used, kept and maintained as such by Declarant, the Association and the Owners, their family members, guests, lessees and invitees in accordance with the provisions of these Protective Covenants. The Association may, at some future date, elect to build additional amenities on the Open Space. The Open Space shall not include those portions of an Owner's Lot which the Owner is required to maintain pursuant to these Protective Covenants. Any Open Space within the Property shall be maintained, administered, and owned by the Association.

2.2.2.4. Lake. Lake shall be defined as that portion of West Cape Estates designated as "Lake," "Tract B" or "Water Management Area" on the plat of West Cape Estates, and it is also referred to herein as the "Storm Water Management Area". The Lake shall always be kept and maintained as a lake for water detention, drainage and water management purposes in compliance with all applicable governmental and water management district requirements. The Lake shall be a part of the Common Property and shall be maintained, administered and ultimately owned by the Association, without the approval of the Owners or the Association. The Declarant reserves the right to grant easements for the purpose of maintaining and administering the Lake throughout all portions of West Cape Estates. The Association must accept any conveyance of all or a portion of the Lake to it made by quitclaim deed or otherwise from the Declarant. Declarant further reserves the right to convey all or a portion of the Lake to any governmental authority Declarant shall deem appropriate. The Lake shall not be used for boating or

swimming and the Owners shall not use the Lake for recreation purposes, except that fishing from the banks of the Lake shall be permitted, unless later restricted by Rules of the Board.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL FOR THE LAKE, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS. ANY INDIVIDUAL USING THE LAKE SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE. USE OF THE LAKE SHALL BE STRICTLY LIMITED BY THE TERMS OF THESE PROTECTIVE COVENANTS AND ANY RULES ADOPTED HEREUNDER.

2.2.2.5. Entry Gate and Wall. The "Entry Gate" shall mean that Gate located at the entrance to West Cape Estates and the "Wall" or "Walls" constructed around the Community. The Association shall be responsible to maintain the Entry Gate and the Walls, and the Board shall establish rules and regulations concerning the same.

2.2.2.6. Street Lights and Street Trees. All "Street Lights" and "Street Trees" that may be placed within the Common Property or placed by the Declarant on individual Lots, shall be maintained, administered and, in the case of Street Lights, ultimately owned by the Association.

2.2.2.7. Lake Maintenance and Drainage Easements and Lake Access and Drainage Easements. The "Lake Maintenance Easements" and "Lake Access Easements" as shown on the Plat or otherwise duly granted or created by Declarant or the Association shall be maintained, administered, and ultimately owned by the Association.

2.2.2.8. Water Management and Detention Easements. "Water Management and Detention Easements" means any Water Management and/or Detention Easements shown on the Plat or otherwise duly granted by Declarant or the Association. The portions of the Water Management and Detention Easements in which water is located will be maintained by the Association in such manner as may be required by applicable governmental authority.

For the term of these Protective Covenants, any portions of the of the Water Management and Detention Easements in which water is located are not for the use and enjoyment of the public, but are expressly reserved for the use and enjoyment of the Declarant, the Association, the Owners, and any parties to whom the Association, or the Declarant, may expressly grant such rights, in accordance with the Rules, if any, and the regulations of the applicable governmental authority. Declarant, the Association, and the Owners shall have the right to use the portions of the Water Management and Detention Easements in which water is located, to drain surface water from their Lots into the portions of the Water Management and Detention Easements in which water is located, however, the Owners shall not draw water from the portions of the Water Management and Detention Easements in which water is located, for irrigation purposes.

2.2.2.9. Sidewalks. Declarant may construct sidewalks in various locations within West Cape Estates. Driveway cuts and the construction of the driveways must be done in accordance with plans and specifications approved by Declarant.

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2.2.2.10. Irrigation Well System. Declarant may construct wells upon and into the Common Property. Such wells shall be used for irrigation purposes throughout West Cape Estates, for purposes of filling the Lake, to supply water and irrigation services to the Common Property and the Community Amenities. The Association shall have the obligation to maintain the Irrigation Well System.

2.2.2.11. Right to Add Additional Improvements. Such portions of the Common Property upon which Declarant has constructed, or hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located thereon. Declarant reserves the right, but shall not be obligated to construct additional facilities upon the Common Property. The decision as to whether to construct additional facilities and the erection thereof shall be in the sole discretion of Declarant.

2.2.3. Costs. All costs associated with operating and maintaining the Common Property shall be the obligation of the Association. The Common Property shall be conveyed to the Association in accordance with the provisions of Paragraph 2.3 hereof.

2.2.4. Private Use. For the term of these Protective Covenants the Common Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, the Owners and residents of the Property, their family members, guests, invitees and lessees but only in accordance with these Protective Covenants.

2.2.4.1. Use for Sales. Notwithstanding anything in these Protective Covenants to the contrary, however, Declarant hereby expressly reserves the right to use the Common Property, including the Recreation Area and the Residential Property in connection with the sale, marketing, and promotion by Declarant of Lots in the Property and other communities developed by Declarant, including, but not limited to, the holding of sales and marketing meetings, sales promotions and related activities.

2.2.4.2. The right to use the Common Property shall be subject to the Rules, as the same may be amended from time-to-time.

2.2.5. Rules. The Association by its Board shall have the right to promulgate and impose Rules and thereafter to modify, alter, amend, rescind and augment any of the same (collectively the "Rules") with respect to the use, operation and enjoyment of the Common Property and any Improvements located thereon. The Rules so promulgated shall in all respects be consistent with the use covenants set forth in these Protective Covenants and with the architectural and beautification plan for West Cape Estates as may be established by Declarant. The Board may modify, alter, amend and rescind such Rules provided such modifications, alterations, amendments and rescissions are consistent with the use covenants set forth herein and, for as long as Declarant is offering any Lots for sale in West Cape Estates, consented to by Declarant.

### 2.3. Conveyance of the Common Property.

Declarant agrees that it shall convey to the Association by quitclaim deed, and the Association is obligated to accept, fee simple title to the Common Property subject to: (i) the terms and provisions of these Protective Covenants; (ii) all applicable Community Documents; (iii) real estate taxes for the year of such conveyance; (iv) all applicable zoning ordinances; (v) such facts as an accurate survey would show; and (vi) all covenants, easements, restrictions and reservations of record or common to the

subdivision. While Declarant shall have the right to convey all or such portions of the Common Property as Declarant shall from time to time determine, the conveyance of the Common Property shall be effectuated no later than thirty (30) days after the Turnover Date; provided, however, that those portions of West Cape Estates, if any, which become Common Property subsequent to the Turnover Date shall be conveyed by Declarant within thirty (30) days after the property in question becomes Common Property.

THE ASSOCIATION AND THE NON-DECLARANT MEMBERS ARE OBLIGATED TO ACCEPT THE COMMON PROPERTY AND ANY IMPROVEMENTS THEREON, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE MASTER ASSOCIATION BY THE DECLARANT. THE DECLARANT MAKES NO REPRESENTATIONS, AND DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OF CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE COMMON AREAS AND FACILITIES. THE CONSTRUCTION BY THE DECLARANT OF AN ENTRY GATE SHALL NOT CONSTITUTE A REPRESENTATION OR A WARRANTY OF SECURITY WITHIN WEST CAPE ESTATES. AT THE TIME OF CONVEYANCE, DECLARANT SHALL TRANSFER AND ASSIGN TO THE ASSOCIATION, WITHOUT RECOURSE, ALL EXISTING WARRANTIES IT RECEIVES FROM MANUFACTURERS AND SUPPLIERS RELATING TO ANY OF THE FACILITIES WHICH ARE ASSIGNABLE.

Notwithstanding anything contained herein to the contrary, portions of the Common Property may be dedicated to any public agency, authority or utility, subject to such conditions as the Owners may agree upon, provided the public agency agrees to the dedication.

#### 2.4. Disputes as to Use.

In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in these Protective Covenants, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with these Protective Covenants and shall not be subject to a contrary determination by the Board.

#### 2.5 Mortgaging of Common Property.

The Common Property cannot be conveyed (except for the conveyance described in Paragraph 2.3 hereof) or mortgaged without the consent of two-thirds (2/3) of all Owners, including Declarant.

### 3. EASEMENTS

#### 3.1. Declarant's Right to Grant Easements and Use Rights to Lake Access Easements

Declarant reserves the right to grant easements over, under, in and upon the Property in favor of Declarant, the Association, their respective designees, Owners, and their lessees, and their family members, guests and invitees, and appropriate utility and other service corporations or companies for ingress and egress for persons and vehicles and to provide power, electric, sewer, water and other utility services and lighting facilities, irrigation, television transmission and distribution facilities (including, but not limited to, the installation, maintenance, repair and replacement of a "master" television antenna), cable television facilities, telecommunications, security service and facilities in connection therewith, and access to publicly dedicated streets, and the like. Declarant reserves the right to grant rights to use the Lake Access Easements as shown on the Site Plan or the Plat or as otherwise duly created or granted to such parties as Declarant shall determine to be appropriate in accordance with these Protective Covenants; provided, however, these Easements shall not be used for other utilities. Prior to the Turnover Date, Declarant (and at Declarant's request, the Declarant and the Association, as applicable) shall execute, deliver and impose, from time to time, such easements and cross-easements for any of the foregoing purposes and at such location or locations as determined by Declarant; provided, however, that no such easements shall be granted hereunder with respect to any portion of the Property which shall create a right, nor shall any such easement holder have the right, to cause any buildings or other permanent facilities constructed within West Cape Estates in accordance with these Protective Covenants and the other Community Documents to be altered or detrimentally affected by any construction or installation pursuant thereto or any of the facilities, equipment or parts thereof, nor shall an easement holder have the right to construct or install Improvements or any parts thereof under any then-existing structures or buildings so built in accordance with the said Community Documents provided that the foregoing shall not preclude Declarant or its successors or assigns or any other easement holder from making minor alterations to then-existing Improvements other than buildings (such as, but not limited to, alterations or temporary removal of a fence or a portion thereof), provided that same is repaired and/or restored, as the case may be, by Declarant or its successors or assigns or any other easement holder at their expense within a reasonable time thereafter.

#### 3.2. Perpetual Nonexclusive Easement to Public Ways

3.2.1. The walks, streets and other rights-of-way located upon the Common Property now or hereinafter located within West Cape Estates shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement for ingress and egress and access to, over and across the same to public ways, including dedicated streets, which easement is hereby created in favor of all of the Owners in West Cape Estates now or hereafter existing, for the use of Owners, and for the use of their family members, guests, invitees or lessees for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended. The Association shall have the right to establish the rules governing the use and enjoyment of the Common Property and all easements over and upon same.

3.2.2. Notwithstanding anything contained herein to the contrary, if ingress or egress to a Lot is through the Common Property, any conveyance or encumbrance of such Common Property is subject to the Owner's easement for access.

#### 3.3. Easements for Encroachments

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All of the Property shall be subject to easements for encroachments, which now or hereafter exist, caused by settlement or movement of any Improvements upon the Common Property or Improvements contiguous thereto or caused by inaccuracies in the building or rebuilding of such Improvements or caused by changes in the building design or site plan provided such changes have been approved by the appropriate governmental authorities. The above easements shall continue until such encroachments no longer exist.

#### 3.4. Easements for Utilities and Services

For the purpose of performing their authorized services and investigations, ingress and egress over and across the Property is hereby granted to: (i) police and other authorities of the law and garbage collection, building, zoning and code enforcement inspectors and other municipal services; (ii) United States mail carriers; (iii) fire protection agencies; (iv) representatives of public utilities, including, but not limited to, telephone, water and electricity and other utilities authorized by Declarant; and (v) any other such persons as Declarant, from time to time, may designate. The Property shall be subject to such easements for utilities as may be required to properly and adequately serve the Property as it exists from time to time. Said easements, whether heretofore or hereafter created, shall constitute covenants running with the Property and, notwithstanding any other provision of these Protective Covenants, may not be substantially amended or revoked in such a way as to unreasonably interfere with its proper and intended use and purpose and shall survive the termination of these Protective Covenants. Notwithstanding anything herein to the contrary, the terms "utilities" and "services" as used in this Paragraph 3.4 shall not include telecommunications nor include cable or master television services.

#### 3.5. Right of the Association, Declarant to Enter Upon the Property

An easement(s) for ingress, egress and access in favor of Declarant, the Association, the Committee, and all agents, employees, or other designees of Declarant, the Association, or the Committee, to enter at reasonable times and intervals, upon any portion of the Property for the purpose of inspecting any construction, proposed construction, or Improvements, or fulfilling the rights, duties and responsibilities of Ownership, administration, maintenance and repair of an Owner, or the Association, as applicable. Notwithstanding the foregoing, nothing contained herein shall be interpreted to impose any obligation upon the Association, the Committee or Declarant, to maintain, repair, or construct any Home or other Improvement which an Owner is required to maintain, construct or repair.

#### 3.6. Drainage, Water Management and Lake Maintenance Easements

An easement(s) is reserved for the Declarant and the Association, as applicable, for the installation, maintenance, construction and repair of water management and drainage facilities including, but not limited to, the Lake, canals, pumps, pipes, inlets and outfall structures and all necessary appurtenances thereto and for water Detention, irrigation, drainage and water management purposes in compliance with all applicable governmental and South Florida Water Management District requirements. No structure, planting or other material shall be placed or permitted to remain or alteration made to the easement area which may change the direction of flow, or drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements without the prior written consent of the South Florida Water Management District and its successors so long as same or a successor agency shall exist. The easement area on each portion of the Property and any Improvements in it, together with adjacent shoreline, shall be maintained by the Association in ecologically sound condition, and Owners shall not make any

changes to the edge of the Lake or the easement areas. Declarant, the Community Association, and the Owners shall have the right to use the Drainage and Lake Maintenance Easements to drain surface water from their Residential Property, the Common Property, and the Property into the Storm Water Management System. In the event the applicable governmental authority is not satisfied with the maintenance of the Lake Maintenance Easement areas, such entity shall have the right to perform such maintenance and charge the Association for such maintenance. In the event the Association must remove Improvements or plantings placed by an Owner in the easement area, the Owner shall pay the cost of such removal.

### 3.7 Reservation of Rights of Declarant

Each Owner by acceptance of a deed to real property within West Cape Estates, whether or not it shall be so expressed in any such deed or other conveyance consents, agrees to and shall be bound by the exclusive rights, privileges, easements and rights-of-way reserved to and vested in Declarant pursuant to the provisions of this Article 3 with all such rights, privileges, easements and rights-of-way being deemed reserved to Declarant and excepted from any conveyance or dedication by Declarant of any portion of the Property.

To the extent that the creation of any easements on the Property permitted to be created hereunder require the joinder of Owners by separate instruments, Declarant, by their duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such instruments, and the Owners, by the acceptance of deeds to real property within West Cape Estates, irrevocably nominate, constitute and appoint Declarant, through their duly authorized officers, as their proper and legal attorney-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such instrument executed pursuant to this Paragraph shall recite that it is made pursuant to this Paragraph.

## 4. The Association

### 4.1. Membership

4.1.1. Each Owner shall be a Member of the Association. An Owner, by acceptance of a deed or other instrument evidencing his or her ownership interest, and whether or not stated therein, acknowledges the authority of the Association as stated in these Protective Covenants as the same may be amended or supplemented from time to time, and agrees to abide by and be bound by the provisions of the Community Documents. In addition, the family, relatives, guests, invitees and lessees of the Owners (and the family, relatives, guests, and invitees of the lessees), shall, while in or on any part of the Property, abide and be bound by the provisions of the Community Documents.

4.1.2. The Members shall consist of Declarant, for so long as Declarant owns any Lots and the Owners. The rights of the Members regarding voting, corporate meetings, notices and other Community Association matters shall be as set forth herein and in the Community Documents.

### 4.2. Board

4.2.1 The affairs of the Association shall be governed by a Board of Directors. Each director shall have one equal vote. Except with respect to directors appointed by the Declarant, the directors

shall be Owners. Co-Owners of a Lot shall not serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member.

4.2.2 The Board shall consist of three to seven directors. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

4.2.3 Until the Turnover Date, a majority of the directors shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant. After the Turnover Date, the Declarant shall be entitled to appoint one Director to the Board so long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of all Lots that can be built within West Cape Estates.

#### 4.3. Services

The Association may perform any of the following services:

4.3.1. Provide maintenance of the Common Property and any other areas specifically designated herein or in an amendment or supplement hereto, in a Neighborhood Declaration or amendment thereto (consented to in writing by Declarant) as the maintenance responsibility of the Association. The Association may, to the extent permitted by the appropriate governmental authority, also provide maintenance of all City, district or County properties including, but not limited to, publicly dedicated rights of way which are located within or in a reasonable proximity to the Property to the extent that their deterioration would adversely affect the appearance of the Property. Subject to the approval of the Committee, the Association shall adopt and may amend and/or supplement standards of maintenance and operation applicable to the Property which is the maintenance responsibility of an entity or person other than Declarant to assure that such maintenance responsibilities are carried forth in a manner so as to maintain the beauty and aesthetic quality of West Cape Estates as established by Declarant.

4.3.2. Provide maintenance of any real property located within or adjacent to West Cape Estates upon which the Association has accepted, in a Supplement hereto or in another writing, an easement for said maintenance.

4.3.3. Provide maintenance of the Storm Water Management System, drainage area or Lake within the Property if and to the extent permitted or required by any governmental authority having jurisdiction thereof.

4.3.4. Provide insect, pest and aquatic control to the Common Property and adjacent areas to the extent that it is necessary or desirable in the judgment of the Association to supplement any service provided by the State and local governments or other parties in relation thereto.

4.3.5. Take any and all actions the Board deems necessary to enforce all covenants, conditions and restrictions affecting any part of the Property or adjacent areas, and to perform any of the functions or services delegated to the Association in any of the Community Documents.

4.3.6. Conduct the business of the Association, including, but not limited to, the hiring of professionals to provide services such as legal, accounting, financial and communication services and inform Members of activities, meetings and other important events as the Board deems necessary or appropriate.

4.3.7. Purchase general liability and hazard insurance covering Improvements and activities on the Common Property.

4.3.8. Publish and enforce, as the Association deems necessary, the Rules.

4.3.9. Provide and maintain Street Lights or other lighting of the Roadway and sidewalks throughout the Common Property.

4.3.10. Provide garbage and trash collection and disposal unless provided by a governmental entity. Owners shall be required to conform to the Rules dealing with such collection including manner and place of collection.

4.3.11. Construct, repair and maintain Improvements on the Common Property.

4.3.12. Provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain the Common Property in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at West Cape Estates.

4.3.13. Enter into a professional management contract for the management and maintenance of the Common Property. The contract must include a right of termination clause that the Association can exercise at any time after the transfer by Declarant of control of the Association. This right of termination must not require the payment of any penalty or an advance notice of more than ninety (90) days.

4.3.14. Hire security services to be utilized at the main entrances to the Property or otherwise; provided, however, that such services shall be considered an elective, not a requirement and shall be retained at the sole discretion of the Board.

#### 4.4. Obligations of the Association

##### 4.4.1. Functions and Services.

The Association may carry out the functions and services as specified in this Article 4 to the extent such functions and services can be provided with the proceeds first from Individual Assessments and then, if necessary, from Special Assessments. The functions and services referred to in this Article 4 to be carried out or offered by the Association at any particular time shall be determined by the Board taking into consideration the proceeds of Assessments and the needs of the Members of West Cape Estates. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced at any time upon the affirmative vote of a majority of the Board, except that the Association shall be obligated to perform the functions necessary to maintain the Storm Water Management System as

described in subparagraph 4.3.3 above, unless the City, County and/or the applicable governmental authority relieves the Association from such obligations.

#### 4.4.2. Conveyance to the Association

The Association is obligated to accept any and all conveyances to it by Declarant of fee simple titles, easements or leases to all or portions of the Common Property.

#### 4.4.3. Conveyance by the Association

The Association is empowered to delegate any of its functions or convey any of its property to any governmental entity as may be required or deemed necessary from time to time, subject to acceptance by such governmental entity. The Association reserves the right to convey any property or personal property within the Property to an Owner located within the Property, if such property or personal property is located within the Property. Such party must accept any such conveyance.

### **5. COVENANT TO PAY ASSESSMENTS FOR OPERATING EXPENSES; ESTABLISHMENT OF LIENS; COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT; CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES**

5.1. Affirmative Covenant to Pay Operating Expenses. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Community Documents; and (ii) maintain, operate and preserve the Common Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Lot and each Owner, from and after the recordation of these Protective Covenants in the Public Records of the County, the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Assessments, Individual Expense Assessments, and Special Assessments. Each Owner other than Declarant by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Operating Expenses in accordance with the provisions of the Community Documents.

#### 5.2. Establishment of Liens

Any and all Assessments against Lots made by the Association in accordance with the provisions of the Community Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot against which each such Assessment is made. Each Assessment against a Lot, together with Interest thereon, and other costs of collection including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Lot. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, where an Institutional Mortgagee of record obtains title to a Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall not be liable for the share of Assessments pertaining to such

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Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the Assessment against the Lot in question is secured by a claim of lien for Assessments that is recorded prior to the recordation of the mortgage which was foreclosed or with respect to which a deed in lieu of foreclosure was given.

### 5.3. Collection of Assessments from Owners

In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

2. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association and such advance by the Association shall not waive the default.

3. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

4. To file an action at law to collect said Assessment plus Interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge as provided in the Bylaws to defray additional collection costs.

### 5.4. Collection by Declarant

In the event for any reason the Association shall fail to collect the Assessments, then, in that event, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant; using the remedies available to the Association against an Owner as set forth in Paragraph 5.3, which remedies (including, but not limited to, recovery of Legal Fees) are hereby declared to be available to Declarant.

### 5.5. Rights of Declarant and Institutional Mortgagees to Pay Assessments and Receive Reimbursement

Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have

become a charge against any Lot(s). Further, Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items or Operating Expenses on behalf of the Association where the same are overdue and where lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement, to Declarant if Declarant is entitled to reimbursement.

#### 5.6. Declarant Exemption

Notwithstanding anything herein to the contrary, Declarant shall not be liable for any Assessments as long as Declarant pays all deficits in operation of the Association above the Assessments received. In calculating such deficit, only actual expenses (other than capital expenses, reserves and Roadway Reserves) shall be computed.

5.7. Exempt Properties. All properties dedicated to, and accepted by, the City of Cape Coral, Lee County, the Lee County Water-Sewer District or any other public or quasi-public authority shall be exempt from the assessments created herein.

### 6. METHOD OF DETERMINING ASSESSMENTS AND ALLOCATION OF ASSESSMENTS

#### 6.1. Determining Amount of Assessments

The Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Community Documents. Each Lot within the Property shall be assessed its pro rata portion (1/28th) of the Operating Expenses which shall be the "Individual Assessment" as to each Lot. Therefore, the Operating Expenses shall be divided by the total of the number of Lots, twenty-eight, in West Cape Estates, regardless of whether the Home is completed, partially completed or vacant. Notwithstanding anything in the Community Documents to the contrary, any assessment for legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense which is properly the subject of a Special Assessment and not the subject of a regular Individual Assessment.

#### 6.2. Assessment Payments

The Individual Assessments shall be payable monthly or quarterly, in advance, on the first day of each month or quarter. The Individual Assessments, and the monthly or quarterly installments thereof, as well as all Assessments provided for herein and all installments thereof may be adjusted from time to time by the Board to reflect changes in the Budget or in the event that the Board determines that the Assessments or any installment thereof is either less than or more than the amount actually required.

### 6.3. Special Assessments

"Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Community Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for, or on, the Common Property or the cost (whether in whole or in part) of reconstructing or replacing such improvements. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any "Individual Assessment". Any such Special Assessments assessed against Lots, and Owners thereof, shall be paid by such Owners in addition to any other assessments. Special Assessments shall be assessed in the same manner as the Individual Assessment; provided, however, a Special Assessment for capital improvements may not be assessed to Declarant or against Lots owned by Declarant without the consent of Declarant, as applicable. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date for the construction of new Improvements (not to replace existing Improvements) costing over \$28,000.00 shall require the affirmative assent of at least two-thirds (2/3) of all Owners represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Prior to the Turnover Date, a Declarant controlled Board may make a Special Assessment without the consent of the Owners.

### 6.4. Individual Expense Assessments

Individual Expense Assessments include any Assessment levied against any Owner occasioned by such Owner's or any such Owner's family members, guests, invitees or lessees and their family members, guests and invitees use, maintenance, or treatment of the Common Property and/or Residential Property or such person's non-compliance with the Community Documents including, but not limited to, non-compliance of Lots or Homes, and any Improvements or personal property contained therein with the standards set forth in the Community Documents, or as adopted from time to time by the Association or the Committee pursuant thereto, which causes the Association, Declarant or the Committee to incur additional costs and expenses which would not have been incurred if the Owner's or the Owner's family members, guests, invitees or lessees and their family members, guests and invitees had been in compliance with the foregoing ("Noncompliance"). The amount of the Individual Expense Assessment(s) shall be equal to any such additional costs incurred. The Individual Expense Assessment and any late charges relating thereto shall be assessed against the Owner(s) in Noncompliance and collected and enforced in the same manner as any other Assessments hereunder as provided herein.

The Association agrees to reimburse Declarant, as applicable, out of funds received by the Association from Individual Expense Assessments levied therefor for any cost incurred by Declarant, including Legal Fees, as a result of such Noncompliance.

Individual Expense Assessments shall also include an Owner's pro rata share, as determined by the Association, of such amounts as are billed directly to the Association and due from the Association in the event the Association enters into a contract with a cable television company or other entity, including Declarant, in order to make cable television service and/or any related telecommunication services available to all Lots pursuant to an agreement ("Cable Agreement") which provides that the Association shall be billed directly for all or certain of the cable television services and/or related services rendered by the cable company to Lots.



Notwithstanding anything to the contrary contained herein, it is recognized and declared that Individual Expense Assessments shall be in addition to and not part of any other Assessment; any such Individual Expense Assessment assessed against an Owner shall be paid by such Owner in addition to any other Assessment.

6.5. Liability of Owners for Individual Assessments

By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Assessment and their applicable portion of any Special Assessments as well as for all Assessments for which they are liable as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessments and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner who is or becomes an Owner, for himself or herself and his or her heirs, executors, successors and assigns, that in the event Owners fail or refuse to pay their Individual Assessment or any portion thereof or their respective portions of any Special Assessments or any other Assessments, then the other Owners may be responsible for increased Individual Assessments or Special Assessment or other Assessments due to the nonpayment by such other Owners, and such increased Individual Assessment or Special Assessment or other Assessment can and may be enforced by the Association or the Declarant, in the same manner as all other Assessments hereunder as provided in the Community Documents.

6.6. Exemption of Declarant

While the Declarant is in control of the Association, it shall be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which Declarant obligates itself to pay any operating expenses incurred that exceed the assessments receivable from other Members and other income of the Association (herein "funding the deficit"). The Declarant does hereby obligate itself to fund the deficit for the period of time beginning with the recording of this Declaration and continuing through the earlier to occur of: (i) the Turnover Date; or, (2) 12 months. Provided, however, that the Declarant reserves the right to extend its obligation to fund the deficit for successive 6 month periods.

6.7. Declarant's Obligation to Fund Deficit Not the Obligation of Institutional Mortgagees

Notwithstanding anything to the contrary herein contained, it is specifically understood and declared and each Owner by the acceptance of a deed or other instrument of conveyance of a Lot within the Property shall be deemed to have acknowledged and agreed that no Institutional Mortgagee (other than Declarant) or any successor or assign of such Institutional Mortgagee, or any person acquiring title to any part of the Property by reason of the foreclosure or otherwise shall be deemed to have made, assumed or otherwise undertaken any covenants or obligations of Declarant to pay the difference between the actual Operating Expenses and the Assessments assessed against Lots and the Owners thereof during the Period of Declarant's control as may be provided for in any of the Community Documents; provided, however, that an Institutional Mortgagee may, at its option, determine to continue the obligation of Declarant to fund the deficits as herein provided. Additionally, a successor Declarant shall not guarantee the level and/or duration of any Assessments provided for under any of the Community Documents or to pay the difference between

the actual Operating Expenses and the Assessments assessed against Lots and the owners thereof unless such obligation is assumed by such successor Declarant.

**6.8. Working Capital Contribution/Start-Up Fee**

Each Owner who purchases a Lot from Declarant shall pay to the Association at the time legal title is conveyed to such Owner a "Working Capital Contribution" or "Start-Up Fee." The Working Capital Contribution shall be an amount equal to a three months' share of the annual Operating Expenses applicable to such Lot pursuant to the initial Budget (which may be different from the Budget in effect at the time of closing). The purpose of the Working Capital Contribution is to ensure that the Association will have cash available for initial start up expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of Individual Assessments and shall have no effect on future Individual Assessments.

**6.9. Exempt Property**

Operating Expenses shall be assessed only against the Lots, and all other portions of the Property shall be exempt therefrom.

**7. OPERATING EXPENSES**

The following operating expenses of the Association are declared to be Operating Expenses which each Owner is obligated to pay to the Association as provided in these Protective Covenants and the Community Documents.

**7.1. Taxes**

Any and all taxes levied or assessed at any and all times by any and all taxing authorities including all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments by the South Florida Water Management District and any successors, and in general all taxes and tax liens which may be assessed against the Common Property and against any and all personal property and improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon shall be considered Operating Expenses.

**7.2. Utility Charges**

All charges levied for utilities providing services for the Common Property whether they are supplied by a private or public firm shall be considered Operating Expenses. It is contemplated that this obligation will include all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge.

**7.3. Insurance**

The premiums on any policy or policies of insurance required to be maintained under these Protective Covenants and the premiums on any policy or policies the Association determines to maintain even if not required to be maintained by the specific terms of these Protective Covenants shall be Operating Expenses.

#### 7.4. Destruction of Buildings or Improvements

Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Common Property by fire, windstorm, flood or other casualty regardless of whether or not the same is covered in whole or in part by insurance, shall be Operating Expenses. In the event insurance money shall be payable, such insurance money shall be paid to the Association who shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage. The Association shall pay into such account, either in addition to the insurance proceeds or in the event there are no insurance proceeds, such sums as may be necessary so that the funds on deposit will equal the costs of repair and reconstruction of the damage or destruction. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments as provided in Paragraph 6.3 of these Protective Covenants and subject to the limitations therein set forth with respect to Special Assessments. The Association agrees that it will levy Special Assessments to provide the funds for the cost of reconstruction or construction within ninety (90) days from the date the destruction takes place and shall go forward with all deliberate speed so that the construction or reconstruction, repair or replacement, shall be completed within nine (9) months from the date of damage.

#### 7.5. Maintenance, Repair and Replacements

Operating Expenses shall include all expenses necessary to keep, maintain, and repair any and all buildings, Improvements, personal property and furniture, fixtures and equipment upon the Common Property including landscaping, lawn and sprinkler service, and the Irrigation Well System, in a manner consistent with the development of West Cape Estates and in accordance with the covenants and restrictions contained herein, and in conformity with all orders, ordinances, rulings and regulations of any and all federal, state, county and city governments having jurisdiction thereof as well as the statutes and laws of the State of Florida and the United States. This shall include any expense attributable to the maintenance and repair of the water maintenance easements, storm water management facilities, Lake, pumps or other equipment, if any, located upon or servicing West Cape Estates, whether or not pursuant to agreements with utility corporations. Any expenses for replacements which would not be in the nature of normal repair and maintenance shall be the subject of a Special Assessment as provided in Paragraph 6.3 of these Protective Covenants and subject to the limitations thereon set forth with respect to Special Assessments.

#### 7.6 Maintenance of Owners' Landscaping and Swimming Pools/Spas throughout West Cape Estates

Operating Expenses shall include all expenses necessary to keep, maintain and replace the basic landscaping on each Owner's Lot, including sprinkler systems, lawn, basic shrubbery and street trees planted by Declarant on each Owner's Lot, which are adjacent to the roadway. In an effort to provide for fewer entries into the community by non-residents, and to provide a uniform high standard of maintenance for all property within the community, the Association shall contract with one or more lawn and landscape maintenance services, the cost of which shall be an Operating Expense. Regarding the Owners' trees and shrubs, the Owners shall have the choice of: (i) maintaining it themselves (i.e., without contracting an outside service); or (ii) paying the Association's contract landscape service provider(s) an additional sum to provide the additional service. In the event the Owner fails to maintain in accordance with the Community Standards, then the Association shall have the right, but not the obligation, upon fifteen (15) days' written notice to the responsible party, to enter upon the subject property for the purpose of performing the

maintenance and/or replacement described in such notice to the Owner. The Association's cost of performing such maintenance and/or replacement and the expense of collection (including, but not limited to, Legal Fees) shall be assessed by the Association against the Owner as an Individual Expense Assessment.

Operating Expenses shall also include the expense necessary to provide basic swimming pool/spa maintenance to each Owner that has a pool and/or spa. The Association shall contract with one or more pool services, the cost of which shall be an Operating Expense. Each Owner shall have the option of maintaining his or her own pool without any outside service and the Association shall not assess such Owner for pool maintenance.

#### 7.7. Indemnification

The Association covenants and agrees that it will indemnify and save harmless Declarant and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Property or the appurtenances thereto from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. The costs of fulfilling the covenant of indemnification herein set forth shall be deemed to be Operating Expenses.

Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in these Protective Covenants to be kept and performed by the Association.

#### 7.8. Administrative and Operational Expenses

The costs of administration of the Association including, but not limited to, any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association shall be deemed to be Operating Expenses. In addition, it is contemplated that the Association may retain a management company or companies or contractors (any of which management companies or contractors may be, but are not required to be, a subsidiary, affiliate or an otherwise related entity of Declarant) to assist in the operation of the Common Property and other obligations of the Association hereunder. The fees or costs of this or any other management company or contractors so retained shall be deemed to be part of the Operating Expenses hereunder.

#### 7.9. Compliance with Laws

The Association shall take such action as it determines necessary or appropriate in order for the Common Property and the Improvements thereon to be in compliance with all applicable laws, statutes, ordinances and regulations of any governmental authority, whether federal, state, county or local, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions and fire hazards, and the cost and expense of such action taken by the Association shall be an Operating Expense.

#### 7.10. Failure or Refusal of Owners to Pay Individual Assessments

Funds needed for Operating Expenses due to the failure or refusal of Owners to pay the Assessments levied shall, themselves, be deemed to be Operating Expenses and properly the subject of an Assessment; provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of Owners to pay a Special Assessment shall, itself, be deemed to be a Special Assessment subject to the limitations thereon.

#### 7.11. Extraordinary Items

Extraordinary items of expense under these Protective Covenants such as expenses due to casualty losses and other extraordinary circumstances shall be the subject of a Special Assessment subject to the limitations thereon with respect to Lots owned by Declarant set forth in Paragraph 6.3.

#### 7.12. Costs of Reserves Excluded

7.12.1. General Reserves. The funds necessary to establish an adequate reserve fund ("Reserves") for periodic maintenance and repair of the Common Property and the facilities and Improvements thereupon, excluding the "Roadway Reserves" described hereinbelow, in amounts determined sufficient and appropriate by the Board from time to time may be included by the Board, if it so determines, in the Association's annual budget; however, Reserves are not part of Operating Expenses. This exclusion of Reserves from Operating Expenses specifically includes, without limitation, reserves for replacements. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Owner shall have any interest, claim or right to such Reserves or any fund composed of same. Notwithstanding the foregoing, nothing contained herein shall require the Board to collect Reserves from the Owners.

7.12.2. Roadway Reserves. The Association shall set up and adequately fund a separate reserve account for the purpose of repairing, maintaining and replacing the Common Property private drives, sidewalks, parking areas, roadways and any other Improvements located within the right-of-way ("Roadway Reserves"). The Roadway Reserves expenses may be included, if the Board so determines, but are not part of Operating Expenses, in Community Association budgets. The monies collected by the Association as Roadway Reserves funds shall be the exclusive property of the Association and no Owner shall have any right, claim or interest to or in same.

7.12.3. Sidewalk Assessment. The Association shall assess each Owner 1/28th of the cost to construct a public sidewalk along Old Burnt Store Road as and when required by the City or other governmental agency. Such sidewalk construction is a requirement under the PDP and shall be done to the standards of the City.

#### 7.13. Miscellaneous Expenses

The cost of all items or costs or expense pertaining to or for the benefit of the Association or the Common Property, or any part thereof, not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

## **8. PROVISIONS FOR THE PRESERVATION OF THE VALUES AND AMENITIES OF WEST CAPE ESTATES**

### **8.1. Occupancy and Use Restrictions.**

For purposes of this Article 8, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees and lessees of any Owner, and any other permitted occupants of a Home. The Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Paragraph 8.1.33 hereof:

8.1.1. Single-Family Use. The Lots shall be for single-family use only. A family is defined to mean any number of persons related by blood, marriage or adoption or not more than two (2) unrelated persons living as a single housekeeping unit.

8.1.2 No Commercial Occupation or Activity. No commercial occupation or activity may be carried on except as such occupation or activity is permitted to be carried on by Declarant under these Protective Covenants.

8.1.3. Nuisance. Subject to reasonable construction activities, no obnoxious or offensive activity shall be carried on nor shall anything be done which may be or become an unreasonable annoyance or a nuisance. No use or practice shall be allowed which is a source of annoyance or which interferes with the peaceful possession or proper use of the Property. No loud noises or noxious odors shall be permitted in any Improvements. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception be located, used or placed on the Property, or exposed to outside view without the prior written approval of the Committee.

8.1.4. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any Improvement nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. Each portion of the Property will be subject to, and the Association and each Owner or resident of the Property will conform to and observe all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Florida, the County, the City of Cape Coral and any and all other governmental and public authorities and boards or officers of the same relating to such Property and any Improvements thereon or the use thereof. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any Lot shall be corrected by, and at the sole expense of, the owner of such Lot.

8.1.5. Leases. No portion of a Home (other than an entire Home) may be rented. No lease may be for less than one (1) year. No subleases shall be permitted. All leases of Homes shall provide, and by the recordation of these Protective Covenants shall be deemed to provide, that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of these Protective Covenants, the Articles, Bylaws, or applicable Rules, or of any other agreement, document or instrument governing the Homes. The Owner of a leased Home shall be jointly and severally liable with his tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease of a Home shall be subordinated to any lien filed by the Association whether before or after such lease was entered into. Rules may further limit the rental of Homes, including but not limited to

the requirement of making application for approval of the lease form and approval of any prospective Tenant by the Board and the payment by the Owner of a processing fee for such review and approval.

In the event that an Owner is delinquent in the payment of his or her Assessments, the Association has the right to require such Owner's tenant, if any, by written notice to such tenant, to pay directly to the Association the rental fees ("Rent") due for such Home. The Association shall then deduct the delinquent Assessments for the Home from the Rent and forward the balance of the Rent to the Owner. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all Owners hereby appoint the Association its agent for such purpose.

8.1.6. Removal of Sod and Shrubbery; Alteration of Drainage. Except for Declarant's acts and activities with regard to the development of West Cape Estates, no Improvements (including, but not limited to, driveways, pools, fences and landscaping) and no sod, top soil, muck, trees or shrubbery shall be removed from the Property, and no change in the condition of the soil or the level of land shall be made anywhere on the Property which would result in any permanent change in the flow or drainage of surface water within West Cape Estates without prior written consent of the Committee.

8.1.7. Antenna and Aerial. No antennae, satellite dish, aerial or the like shall be placed upon the Property (unless wholly contained within an Improvement and not visible from outside the Improvement), except as may be required in connection with the provision of a cable television or master antennae system servicing the Property. No solar collector panels shall be installed on any Improvement unless the location, design and appearance thereof has been approved in writing by the Committee.

8.1.8. Garbage and Trash. Each Owner shall regularly pick up all garbage, trash, refuse or rubbish around his or her Lot, and no Owner or resident shall place or dump any garbage, trash, refuse or other materials on any other portions of West Cape Estates, including any Common Property or any property contiguous to West Cape Estates. Garbage, trash, refuse or rubbish that is required to be placed at the front of a Lot in order to be collected may be placed and kept at the curb after 7:00 p.m. on the day before the scheduled day of collection, but not sooner, and any trash facilities must be removed on the collection day after the pick up. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters and other trash collection facilities shall be approved by the Committee. All containers, dumpsters or garbage facilities shall be stored inside a Home or screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

8.1.9. Radio Transmission. No ham radios or radio transmission equipment shall be operated or permitted to be operated without the prior written consent of the Committee.

8.1.10. Signs. No person other than Declarant shall display any sign, advertisement or notice of any type except as may be previously and specifically approved in writing by the Committee.

8.1.11. Animals and Pets. Only common household pets (i.e., dogs, cats, birds and fish) may be kept, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock or poultry of any kind shall be kept, raised, bred or maintained. Permitted pets shall only be kept subject to and in accordance with such Rules as shall be promulgated from time to time by the Association. Under no circumstances may a vicious or "attack" dog, such as a pit bull or the like, be permitted. Any pet must be carried or kept on a leash when outside of a Home or in an "invisible" fenced-in area. No pet shall be kept outside or in any screened area unless someone is present for supervision. No visible fences shall be permitted.

No pet shall be an unreasonable nuisance or annoyance. If a pet becomes an unreasonable nuisance or annoyance in the opinion of the Association's Board, that pet shall be subject to immediate removal by its owner. All Owners shall immediately pick up and remove any solid animal waste if deposited by his or her pet outside the boundaries of the pet owners' Lot. If any pet interferes with the Association's maintenance responsibility, the applicable pet owner will be required to assume the obligations for such maintenance, without reduction in Assessments for Operating Expenses.

EACH OWNER WHO DETERMINES TO KEEP A PET THEREBY AGREES TO INDEMNIFY THE ASSOCIATION AND DECLARANT, AND HOLD THEM HARMLESS AGAINST ANY LOSS OR LIABILITY OF ANY KIND OR CHARACTER WHATSOEVER ARISING FROM OR GROWING OUT OF THE OWNER'S HAVING ANY ANIMAL IN WEST CAPE ESTATES.

8.1.12. Clotheslines. No clothesline or clothes drying which is visible from outside an Improvement shall be undertaken or permitted.

8.1.13. Temporary Buildings. No tents, trailers, shacks or other temporary buildings or structures shall be constructed or otherwise placed except in connection with construction, development, leasing or sales activities permitted under these Protective Covenants or with the prior written consent of the Committee. No temporary structure may be used as a residence.

8.1.14. Lake. Owners shall not be permitted to operate motorized or non-motorized watercraft upon the Lake located within West Cape Estates. No one, except authorized maintenance providers shall be permitted in or on the Lake. Fishing from the banks of the Lake and stocking of the Lake shall be permitted. Net fishing shall not be permitted. Boats may not be stored on the Common Property. No docks shall be constructed within or adjacent to the Lake. The Lots are prohibited from using the Lake for irrigation purposes.

8.1.15. Garages. Garages must conform to the requirements of the Committee. Garages may be separate from the Home and may have a guest house included. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space without the consent of the Committee. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

8.1.16. Guest Houses. Guest Houses must conform to the requirements of the Committee. Guest Houses may be separate from the main house, but they must complement the overall design of the main house and the Lot.

8.1.17. Drainage or Utility Easements. No structures or trees, except driveways and sidewalks shall be placed on any drainage or utility easements.

8.1.18. Additions and Alterations. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his or her Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, without the prior written approval of the Committee as set forth in these Protective Covenants, which approval may be withheld for purely aesthetic reasons.



8.1.19. Increase in Insurance Rates. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner or resident.

8.1.20. Mining, Drilling, or Excavation. There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise ("Mining Activity") undertaken. Activities of Declarant in dredging, excavating or maintaining drainage or other facilities or easements shall not be deemed Mining Activities nor will the installation of wells, septic tanks or pumps for sprinkler systems as set forth in subparagraph 8.1.28 hereinbelow in compliance with applicable governmental requirements be deemed a Mining Activity.

8.1.21. Maintenance of Property. The Property and Improvements thereon shall be kept in a good, safe, clean, neat and attractive condition, and all Improvements thereon shall be maintained in a finished, painted and attractive condition. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any portion of the Property, no refuse or unsightly objects shall be allowed to be placed or permitted to remain anywhere thereon, and no grass on said property shall be permitted to grow to a height in excess of four inches (4"). In the case of a vacant Lot, grass shall be permitted to grow to six inches (6"). The Association shall have the right to enter upon the Property for purposes of maintenance in the event the Owner does not properly maintain the Home or Lot. Such maintenance shall be billed to the individual Owner as an Individual Expense Assessment. Excepted from the foregoing shall be construction debris, refuse, unsightly objects and waste upon any portion of the Property owned by Declarant or its nominees, through the period of construction of Homes or other Improvements upon the Property. During construction of a Home or other Improvement, the Owner thereof shall be required to maintain said property in a clean condition and, except for the initial construction of Homes by Declarant or its nominees, to provide receptacles for the disposal of trash and rubbish as well as other construction debris. All such construction debris, refuse, unsightly objects and waste must be removed daily.

Upon the failure of an Owner(s) to (i) maintain the portion of the Property and any Improvement thereon which such party is responsible to maintain in accordance with the requirements of these Protective Covenants and to the satisfaction of the Association; and (ii) correct such deficiencies within fifteen (15) days of written notice by the Association, unless a longer period is authorized by the Association, the Association may enter upon the Property and make such corrections as may be necessary. The cost of such corrections shall be paid by the Owner who is required to perform such maintenance. If any Owner(s) fails to make payment within fifteen (15) days after requested to do so by the Association, then the payment requested shall be collected as an Individual Expense Assessment from such Owner and the Association shall be entitled to lien rights upon the portion of the Property requiring such maintenance in accordance with the provisions of these Protective Covenants.

8.1.22. Subdivision and Partition. No Lot shall be subdivided or joined with another Lot.

8.1.23. Casualty Destruction to Improvements. In the event a Home(s) and/or other Improvement(s) upon the Property is damaged or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, the Owner(s) thereof and/or the Association, as may be applicable, responsible for the maintenance thereof shall either commence to rebuild or repair the damaged Home(s) or Improvement(s) upon obtaining Committee approval, if required hereunder, diligently continuing such rebuilding or repairing activities to completion or, upon a determination by the Owner(s) that the Home(s) or Improvement(s) will not be repaired or replaced, promptly clear the damaged Home(s) or Improvement(s) and grass over and landscape such Residential Property as applicable, in a slightly manner consistent with Declarant's plan for beautification of West Cape Estates. Any damaged or destroyed Home(s)

and other Improvements shall only be repaired or replaced with Home(s) and other Improvements of a similar size and type as those damaged or destroyed and without substantial alteration from what was existing prior to the damage or destruction, unless the prior written approval of the Committee is obtained.

8.1.24. Common Property. Nothing shall be stored and/or constructed within or removed from the Common Property other than by Declarant or the Association, except with the prior written approval of the Committee.

8.1.25. Lake Maintenance Easement. Any Improvement on a Lot which is placed within a Lake Maintenance Easement shall be removed if required by the Association. The cost of such removal shall be paid by the Owner(s) of such Home which caused such Improvement as a Individual Expense Assessment.

8.1.26. Boats, Recreational Vehicles and Commercial Vehicles. Only automobiles, pick up trucks, vans constructed as private passenger vehicles with permanent rear seats and side windows, and other vehicles manufactured and used as private passenger vehicles may be parked within the Property without the prior written consent of the Board, unless kept within an enclosed garage. In particular and without limitation, without such consent, no vehicle containing commercial lettering, signs, or equipment, and no truck, recreational vehicle, camper, trailer, or vehicle other than a private passenger vehicle as specified above, and no boat, may be parked or stored outside of a Home overnight. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with services to, the Property.

8.1.27. Vehicular Parking. No person, firm or corporation shall park or cause to be parked any vehicle other than in driveways or specifically designated parking spaces in the Common Property, and in the case of such parking spaces in the Common Property, vehicles may be parked there temporarily only for purposes of using the recreational facilities. The foregoing, however, shall not: (i) apply to Owners who have construction in progress on their particular Home; (ii) prohibit routine deliveries by tradesmen, or the use of trucks or commercial vans in making service calls and short term visits; (iii) apply to a situation where a vehicle becomes disabled and, as a result of an emergency, is required to be parked until it can be towed away, but in any case, no longer than 48 hours; and (iv) apply to vehicles used in connection with construction, development or sales activities permitted under these Protective Covenants.

No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four-wheel passenger automobiles) except within a closed garage and totally isolated from public view; provided, however, Declarant, its successors, nominees or assigns, and the Association may make, or cause to be made, such repairs if necessary in regard to vehicles used in connection with construction, sales, management, or maintenance at West Cape Estates. Vehicles which are missing one or more wheels, have one or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Property, except within a wholly enclosed garage fully shielded from view, for more than two (2) consecutive days. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Property which is deemed to be a nuisance by the Association, or Declarant.

8.1.28. Board's Rule-Making Power. The foregoing use restrictions shall not be deemed to be all inclusive nor to restrict the right of the Association to adopt such reasonable Rules governing the use of the Property as the Board may determine from time to time, provided that such Rules: (i) are not in

conflict with the provisions hereof; (ii) apply equally to all lawful Property residents; and (iii) for so long as Declarant holds any Lots within West Cape Estates, have the prior written approval of Declarant.

8.1.29. Satellite Dish. No more than two (2) satellite dishes, which shall be no larger than twenty-four (24) inches in diameter are permitted on a Home, and shall be allowed only if prior written approval of the Committee is obtained.

8.1.30. Lakefront Lots. No boat house, dock, building, landing, mooring pile, pier or ramps for boats or aircraft shall be erected on or adjoining any lakefront Lot; (b) no lakefront Lot shall be increased in size by filling in the water on which it abuts; (c) no boat canal or other waterways shall be dug or excavated into any lakefront Lot; and (d) no slope of abutting lakefronts shall be altered in any manner whatsoever.

8.1.31. Owner Compliance with Documents. Each Owner and his or her family members, guests, invitees, and lessees and their family members, guests and invitees shall be bound by and abide by the Community Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within West Cape Estates. Such Owner shall be liable to Community Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Common Property rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as an Individual Expense Assessment.

8.1.32. Compliance and Right to Enforce. The Owners and the Declarant shall have the right to enforce the provisions of these Protective Covenants against the Association Members with respect to adherence to the Standards (as hereinabove defined), the Planned Unit Development requirements, and other specific rights granted to the Declarant or the owner of the Property.

8.1.33. No Implied Waiver. The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Community Document (including the Rules now or hereafter promulgated) shall in no event be deemed a waiver by Declarant or the Association or of any other party having an interest in the Property, of its right to object to same and to seek compliance in accordance with the provisions of the Community Documents.

8.1.34. Certain Rights of Declarant. The provisions, restrictions, terms and conditions of this Paragraph 8.1 shall not apply to Declarant as an Owner.

## 8.2. Architectural Control Committee; Improvements to Homes

In order to preserve the values and provide for the uniform appearance of West Cape Estates, the architectural review and control functions of Declarant and the Association herein set forth shall be administered and performed by the Committee which shall be established as follows:

8.2.1. The Committee. Initially, the Committee shall consist of not less than three (3) nor more than seven (7) members designated by Declarant who may be employees of Declarant or members of the Board but who need not be Owners or members of the Board. Declarant shall retain the power to replace such designees and may in its discretion increase the number of members on the Committee. Upon the resignation or replacement of any member of the Committee, the Board shall place or cause to be placed in the books of the Association a notice of such resignation or replacement hereof together with a Notice of

Appointment as to the successor of the departing Committee member both of which shall be signed by the Declarant or its assignee pursuant to subparagraph 8.2.1.1 hereof.

8.2.1.1. For so long as Declarant is entitled to select members of the Committee, Declarant may, at Declarant's sole discretion and for such period as Declarant may determine, assign said right to appoint Committee members to a management or other non-Declarant entity. Said assignee shall be solely responsible for the selection and actions of the Committee during the period of assignment. Notice of such assignment shall be given to the Board who shall place or cause to be placed such notice in the books of the Association.

8.2.1.2. Notwithstanding anything herein to the contrary, at such time as Declarant no longer own any portion of the Property, or when Declarant voluntarily so elects, whichever shall first occur ("Committee Turnover Date"), Declarant shall assign to the Association the right to appoint members of the Committee whereupon the Board shall thereafter appoint the members of the Committee.

8.2.2. Committee Action. A majority of the members of the Committee may designate a member of the Committee to act for it subject to Declarant's approval. Approval or disapproval by a majority of the members of the Committee shall constitute the official approval or disapproval of the Committee. In the event of death or resignation of any member of the Committee prior to the assignment of Declarant's right to appoint Committee members pursuant to subparagraph 8.2.1.2 hereinabove, Declarant shall have the full authority to designate a successor.

8.2.3. Requirement of Committee Approval. Except for Homes and Improvements constructed, installed or placed by or with the approval of Declarant and additions, alterations, modifications and changes to any of the foregoing by or with the approval of Declarant (collectively, "Declarant Improvements"), which Declarant Improvements are not subject to the approval of the Committee and are hereby deemed to conform to the Plan of Development for West Cape Estates, no Improvements on the Property of any kind including, without limitation, any building, shed, play structure, wall, topographical feature, mailbox, landscaping, fence, swimming pool, tennis court or screened enclosure shall be erected, placed or maintained, and no addition, alteration, modification, removal or change to any such Improvement shall be made without the prior written approval of the Committee, including, but not limited to, painting, changing paint color, landscaping and changing landscaping on the Home or Lot.

8.2.4. Method of Obtaining Committee Approval. In order to obtain the approval of the Committee, two (2) complete sets of plans and specifications ("Plans") in compliance with the Minimum Standards for proposed construction shall be submitted to the Committee for its review. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs, and nature, type and color of materials to be used. The Committee may also require the submission of additional information and materials as may be reasonably necessary for the Committee to evaluate the proposed Plans. The Committee shall review and approve or disapprove all Plans submitted to it for any proposed Improvement, alteration or addition solely on the basis of aesthetic standards as to the aesthetic quality of materials and workmanship to be used, suitability and harmony of location, structure and external design in relation to surrounding topography and structures and the overall benefit or detriment which would result to the Property as a whole. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features and shall not be responsible for reviewing, nor shall its approval of any Plans or design be deemed approval of, any design or Plans from the standpoint of structural safety or conformance with building or other codes.

8.2.5. Approval or Disapproval by the Committee. The Committee shall have the right to refuse to approve any proposed Plans which, in its sole discretion, are not suitable or desirable. In approving or disapproving Plans, the Committee shall consider the suitability of the proposed Improvements and/or Plans, the site upon which the proposed Improvements are to be erected, the harmony thereof with the surrounding area, property, Homes, and other Improvements and the effect thereof on the adjacent or neighboring property. Any and all approvals or disapprovals of the Committee shall be in writing and shall be sent to the Board and to each respective Owner submitting same. In the event the Committee fails to approve or to disapprove in writing any Plans forty-five (45) days after submission to the Committee of the Plans and any and all other reasonably requested information and materials related thereto and delivery of a written request for approval or disapproval to the Committee by Owner or Owner's agent or attorney, then said Plans shall be deemed to have been approved by the Committee. All construction and landscaping shall be done in accordance with the Plans approved by the Committee, unless a deviation therefrom has been approved in writing by the Committee. In the event the Committee disapproves any Plans submitted to it ("Disapproval"), then in such event, the Committee shall notify said Owner in writing of such disapproval and the reason therefore. Said Owner may thereafter resubmit the Plans for reconsideration, to Declarant until the Committee Turnover Date and thereafter to the Board, within forty-five (45) days of the Disapproval by submitting to Declarant or the Board, as the case may be, a copy of the Plans accompanied with a written statement setting forth the grounds for the appeal. If not appealed to Declarant or the Board, as the case may be, within said forty-five (45) day period, such Disapproval by the Committee shall be final and binding on all parties concerned therewith. Declarant or the Board, as the case may be, shall have forty-five (45) days to approve or disapprove the Plans. In approving or disapproving any Plans on appeal, Declarant's or Board's decision, as the case may be, shall be governed by the same factors that the Committee is required to consider. In no event, however, shall any Improvement be erected or be allowed to remain which violates any conditions or restrictions contained in these Protective Covenants, the Community Documents or any applicable zoning or building ordinance, regulation, or other governmental requirement.

8.2.6. Committee Standards. The Committee is empowered to publish or modify from time to time design and development standards for West Cape Estates including, but not limited to, standards for the following ("Standards"): (i) architectural design of Improvements including, but not limited to, design standards for any Home or other Improvement constructed within the Property; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior topography and landscaping; (v) exterior appurtenances relating to utility installation; (vi) signs and graphics, mailboxes and exterior lighting; (vii) building setbacks, pools and pool decks, side yards and related height, bulk and design criteria; (viii) pedestrian and bicycle ways, sidewalks and pathways; and (ix) all buildings, topography features, landscaping and Improvements on lands owned or controlled by the Association. A copy of the Standards promulgated by the Committee shall be approved by Declarant, prior to the Committee Turnover Date and thereafter by the Board. An Owner may obtain a copy of the Standards from the Association by making a written request therefor. The Committee may authorize, in a reasonable manner so as not to destroy the general scheme or Plan of Development of West Cape Estates, variances from compliance with any Standards which it has promulgated pursuant hereto when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variance is granted, no violation of the restrictions contained in these Protective Covenants shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of these Protective Covenants for any purpose except as to that particular property and particular provision hereof or Standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing and executed by the members of the Committee.

8.2.7. Liability; Indemnification. The Committee, the Board, the Association and Declarant do not determine or assume any responsibility for the quality of construction or structural soundness of any Improvements and no obligation or liability relating to construction of any Improvements shall result from review or approval of any Plans by the Committee, Board, Community Association, and/or Declarant. Furthermore, the Committee, the Board, the Association, and/or Declarant do not evaluate Plans to determine whether the Plans satisfy all applicable governmental requirements. No member of the Committee, the Board, the Committee's duly authorized representative, the Association, nor Declarant shall be liable to any Owner or any other person or entity for any loss, damage, injury or expense arising out of or in any way connected with the performance of said party's duties hereunder, unless due to willful misconduct. Each and every member of the Committee including, but not limited to, members designated by Declarant, shall be indemnified by the Association and the Owners against all costs, expenses and liabilities, including Legal Fees reasonably incurred by or imposed upon said members in connection with any proceeding, litigation or settlement in which said member becomes involved by reason of being or having been a member or representative of the Committee, the Board, Declarant, which reviewed an appeal of a Committee decision, or any settlement thereof. The foregoing provisions for indemnification shall apply whether or not said member is a member or representative of the Committee, the Board, Declarant, which reviewed an appeal of a Committee decision, or any settlement thereof at the time such expenses are incurred. Notwithstanding the above, in instances where such an individual admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of said member's duties, the indemnification provisions of these Protective Covenants shall not apply; otherwise, the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a member of the Committee may be entitled whether by statute or common law or other provision of the Community Documents.

8.2.8. Enforcement. There is specifically reserved unto the Committee the right of entry and inspection upon any Residential Property or other portion of the Property for the purpose of determination whether there exists any construction of any Improvement which violates the terms of any approval by the Committee or the terms of these Protective Covenants or of any other covenants, conditions, and restrictions to which the deed associated with such Residential Property or other instrument of conveyance makes reference. Except in emergencies, any exercise of the right of entry and inspection by the Committee hereunder shall be made only upon reasonable notice given to the Owner of record at least twenty-four (24) hours in advance of such entry. The Committee is specifically empowered to enforce the provisions of these Protective Covenants by any legal or equitable remedy and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvements. The prevailing party in such litigation shall be entitled to recover all Legal Fees in connection therewith. The Association shall indemnify and hold harmless the Committee from all costs, expenses and liabilities, including Legal Fees incurred by virtue of any member of the Committee's service as a member of the Committee.

## **9. MAINTENANCE AND REPAIR PROVISIONS**

### **9.1. By Owners**

The responsibility of an Owner is as follows:

9.1.1. Maintenance and Repair. Owners covenant and agree that such Owners shall at all times maintain in good condition and at their own expense all exterior and interior portions of their respective Lots and Homes, including, but not limited to, painting exterior walls, cleaning of roofs, maintenance of septic systems, wells, mailboxes (provided by the Association), seawalls, docks and lifts, if any, and

replacement of damaged windows and screens, and all portions of their Lots including any and all Improvements thereon. Any sprinkler systems or landscaping which exceed the basic landscaping which is to be maintained by the Association and paid for as an Operating Expense, as referenced in 7.6 above, shall be the responsibility of the Owner and shall be performed either by the Owner himself or by the Association's contracted landscape services provider.

9.1.2. Alterations. Owners shall not: (i) make any alterations in any Improvement or landscaping within the Common Property or which is to be maintained by the Association; or (ii) remove any portion thereof or make any additions thereto; or (iii) do anything which would or might jeopardize or impair the safety or soundness of such property or the Common Property or which, in the sole opinion of the Committee, would detrimentally affect the architectural design of a building within West Cape Estates without first obtaining the written consent of the Committee.

9.1.3. Duty to Report. Owners shall promptly report to the Association or its agents any defect or need for repairs, the responsibility for the remedying of which lies with the Association.

9.1.4. Liability for Actions. All Owners shall be liable for the expense incurred by the Association of any maintenance, repair or replacement of any real or personal property within West Cape Estates and rendered necessary by his or her act, neglect or carelessness, or by that of his or her lessee or any member of their families, or their guests, employees or agents (normal wear and tear excepted) but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. An Owner shall also be liable for any personal injuries caused by his or her negligent acts or those of his or her lessee or any member of their families, or their guests, employees or agents. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

## 9.2. By the Association

The responsibility of the Association is to repair, maintain and replace any and all Improvements and facilities located upon the Common Property, including, but not limited to, maintaining, repairing and replacing utility services including the operation of the Storm Water Management System. Maintenance includes, but is not limited to, the following: cleanup, landscape care and replacement, lawn care, sprinkler system, and the maintenance of the Lake edge and Lake maintenance easement area, dredging, chemical treatment and other services related to the Lake, drainage areas, structural upkeep, road, sidewalks, parking areas, drives and driveways (subject to the provisions of subparagraph 9.1.1 hereof). In the event that an Owner fails to maintain such portions of West Cape Estates as the Owner is required to maintain in accordance with recorded covenants affecting the Property, the Association shall have the right, but not the obligation, upon fifteen (15) days' written notice to the responsible party, to enter upon the subject property for the purpose of performing the maintenance and/or repairs described in such notice to the Owner. The cost of performing such maintenance and/or repairs and the expense of collection (including, but not limited to, Legal Fees) shall be assessed by the Association against the Owner as an Individual Expense Assessment.

## 10. INSURANCE

The Association shall purchase and maintain, or, alternatively, in the event Declarant so elects, the Association shall be covered under Declarant's insurance. With respect to the following insurance coverages, subject to the following provisions, the cost of the premiums therefor shall be a part of the Operating Expenses. Notwithstanding the foregoing, in the event the Association determines that the cost of insurance

is economically unwarranted or is not obtainable, the Association may determine to either reduce the amount of such insurance, increase the deductible amount or discontinue coverage.

#### 10.1. Public Liability Insurance

A comprehensive policy or policies of general liability insurance naming the Association and, until the Turnover Date, Declarant as named insureds thereof and including the Owners as insureds thereunder insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operation, maintenance and use of the Common Property and any Improvements and buildings located thereon and for any other risks insured against by such policies with limits of not less than (i) One Million Dollars (\$1,000,000) for damages incurred or claimed by any one person for any one occurrence; (ii) not less than Two Million Dollars (\$2,000,000) for damages incurred or claimed by more than one (1) person for any one occurrence; and (iii) full insurable replacement cost for property damage for any single occurrence. Such coverage shall include as appropriate, without limitation, protection against any legal liability that results from lawsuits related to employment contracts in which the Association is a party; bodily injury and property damage liability that results from the operation, maintenance or use of the Common Property; water damage liability; liability for non-owned and hired automobiles; liability for property of others and such other risks as are customarily covered with respect to areas similar to the Common Property in developments similar to West Cape Estates in construction, location and use. The insurance purchased shall contain a "Severability of Interest Endorsement," or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association, Declarant or any other Owners or deny the claim of either Declarant or the Association because of negligent acts of the other or the negligent acts of an Owner.

#### 10.2. Casualty Insurance

Insurance for all buildings and fixtures, equipment and other personal property which comprise a portion of the Common Property in an amount equal to one hundred percent (100%) of the "Replacement Value" thereof with an "Agreed Amount and Inflation Guard Endorsement," if reasonably available, a "Construction Code Endorsement" (including a "Demolition Cost Endorsement," "Contingent Liability from Operation of Building Laws Endorsement" and an "Increased Cost of Construction Endorsement") or its equivalent, if necessary and if reasonably available. The term "Replacement Value" shall mean one hundred percent (100%) of the current replacement costs exclusive of land, foundation, excavation, and other items normally excluded from coverage. The Board may determine the kinds of coverage and proper and adequate amount of insurance including, but not limited to:

(i) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; and

(ii) such other risks as shall customarily be covered with respect to areas similar to the Common Property and in developments similar to West Cape Estates in construction, location and use.

#### 10.3. Flood Insurance

If determined appropriate by the Board or if required by any Institutional Mortgagee, a master or blanket policy of flood insurance covering the Common Property, if available, under the National Flood Insurance Program, which flood insurance shall be in the form of a standard policy issued by a member



of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

#### 10.4. Conditions of Insurance

All insurance purchased by the Association pursuant to this Article shall be subject to the following provisions:

10.4.1. The Association shall have the right to designate an insurance trustee ("Insurance Trustee") to act in the manner provided in these Protective Covenants, which Insurance Trustee (if required) shall be a commercial bank or trust company which is authorized to do business in the State of Florida and which has its principal office in the County and thereafter, at any time and from time to time, the Association shall have the right to change the Insurance Trustee to another such bank or trust company, provided, however, for so long as Declarant owns any Lot(s), Declarant shall have the right, but not the obligation, to require the Association to designate an Insurance Trustee other than the Board. Notwithstanding anything in these Protective Covenants to the contrary, the Board may act as the Insurance Trustee hereunder unless otherwise required by written request of an Institutional Mortgagee, the Declarant. If no Insurance Trustee is required, the Board shall receive, hold and expend insurance proceeds in the manner hereinafter provided as if it were the Insurance Trustee.

10.4.2. If an Insurance Trustee other than the Board is required, then, in that event, all policies of insurance purchased by the Association shall be deposited with the Insurance Trustee upon its written acknowledgment that the policies and any proceeds thereof will be held in accordance with the terms hereof. Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to the Insurance Trustee, and the Insurance Trustee may deduct from the insurance proceeds collected a reasonable fee for its services as Insurance Trustee. The Board is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association in which Owners have or may have an interest. The Insurance Trustee shall not be liable in any manner for the payment of any premium on policies, the renewal of policies, the sufficiency of the coverage of any such policies or any failure to collect any insurance proceeds under any policies.

10.4.3. The duty of the Insurance Trustee shall be to receive any and all proceeds from the insurance policies held by it as such Insurance Trustee and to hold such proceeds in trust for the Association, Owners and mortgagees under the following terms:

10.4.3.1. In the event that a loss of Two Hundred Fifty Thousand Dollars (\$250,000) or less, as determined by detailed estimates or bids for repair and reconstruction obtained by the Board, occurs to any portion of the Common Property, the Insurance Trustee shall pay the proceeds received as a result of such loss to the Association. Upon receipt of such proceeds, the Association shall promptly (if possible under the then circumstances) cause the necessary repairs to be made to the Common Property. In the event the insurance proceeds are insufficient to pay for the cost of repair of the Common Property, the Board shall hold a special meeting of the Board to determine a special charge against all of the Lots to obtain any necessary funds to repair and restore the damaged Common Property. Upon the determination by the Board of the amount of such special charge the Board shall immediately levy such special charge against the respective Lots setting forth the date or dates for payment of same.

10.4.3.2. In the event the Insurance Trustee receives proceeds in excess of Two Hundred Fifty Thousand Dollars (\$250,000) as a result of damages to the Common Property, then the Insurance Trustee shall hold in trust all insurance proceeds received with respect to such damages, together with any and all other monies paid to the Insurance Trustee as provided below and shall distribute such funds in the following manner:

(i) The Board shall obtain detailed estimates or bids for the cost of rebuilding and reconstruction of such damaged property for the purpose of determining whether such insurance proceeds are sufficient to pay for the same.

(ii) In the event the insurance proceeds are sufficient to rebuild and reconstruct all of such damaged Improvements or if the insurance proceeds, together with the funds as described below are sufficient for such purpose, then such damaged Improvements shall be completely repaired and restored. The Board shall negotiate for the repair and restoration of such damaged Common Property and the Association shall negotiate and enter into a construction contract(s) with a contractor or contractors to do the work on a fixed price basis or on any other reasonable terms acceptable to the Board, which contractor(s) shall post a performance and payment bond with respect to such work. The Insurance Trustee shall disburse the insurance proceeds and other applicable funds held in trust in accordance with provisions for progress payments to be contained in such construction contract(s); provided, however, prior to any payment of such funds, the payees of such funds shall deliver to the Insurance Trustee any paid bills, waivers of liens under any lien laws and executed affidavits required by law, the Association or any respective Institutional Mortgagees.

(iii) In the event the insurance proceeds are insufficient to repair and replace all of the damaged Improvements, the Board shall hold a special meeting to determine a Special Assessment against the Lots to obtain any necessary funds to repair and to restore such damaged Improvements. Upon the determination by the Board of the amount of such special charge, the Board shall immediately levy such Special Assessment against the respective Lots setting forth the date or dates of payment of the same, and any and all funds received from the Owners pursuant to such Special Assessment shall be delivered to the Insurance Trustee and disbursed as provided in the Paragraph immediately preceding. In the event the deficiency between the estimated cost of the repair and replacement of the damaged Improvements and the insurance proceeds exceeds the sum of Two Hundred Fifty Thousand Dollars (\$250,000), and two-thirds (2/3) of the Owners subject to such Special Assessment advise the Board in writing on or before the date for the first payment thereof that they are opposed to a special charge, then the Insurance Trustee shall disburse the net insurance proceeds to the Association, whereupon the Association shall use such proceeds for as much of the damaged Improvements as possible, and any remaining balance shall be disbursed to the Owners in proportion of their obligation for contribution. In making such insurance proceeds distribution to the Owners subject to such special charge and their Institutional Mortgagees, the Insurance Trustee may rely upon a certificate of an abstract company as to the names of the then Owners involved and their respective Institutional Mortgagees.

10.4.3.3. In the event that after the completion of and payment for the repair and reconstruction of the damage to the Common Property and after the payment of the Insurance Trustee's fee with respect thereto, any excess insurance proceeds remain in the hands of the Insurance Trustee, then such excess shall be disbursed to the Owners in proportion to their obligation for contributions. In the event, however, such repairs and replacements were paid for by any special charge as well as by the insurance proceeds, then it shall be presumed that the monies disbursed in payment of any repair, replacement or reconstruction were first disbursed from insurance proceeds and any remaining funds held by the Insurance

Trustee shall be distributed to the Owners in proportion of their actual contributions by way of special charge.

10.4.3.4. In the event the Insurance Trustee has on hand, within one hundred eighty (180) days after any casualty or loss, insurance proceeds and, if necessary, funds from any special charge sufficient to pay fully for any required restoration and repair with respect to such casualty or loss, then no mortgagee shall have the right to require the application of any insurance proceeds or special charge to the payment of its loan. Any provision contained herein for the benefit of any Institutional Mortgagee may be enforced by an Institutional Mortgagee.

10.4.3.5. Any repair, rebuilding or reconstruction of damaged Improvement(s) upon the Common Property shall be substantially in accordance with the architectural plans and specifications for: (i) the originally constructed Improvements; (ii) the Improvements as such were previously reconstructed; or (iii) new plans and specifications approved by the Committee; provided, however, any material or substantial change in new plans and specifications approved by the Committee from the plans and specifications of the previously constructed buildings and/or Improvements (except such as are required by applicable law or building codes) shall require approval by the Institutional Mortgagee holding mortgages thereon, if any. Neither the Committee, the Board nor their members shall incur any liability with regard to the approval of any plans and specifications.

#### 10.5. Form of Policies

10.5.1. Nothing herein contained shall prohibit the Association from obtaining a "master" or "blanket" form of insurance for all of West Cape Estates or portions thereof, provided that the coverages required hereunder are fulfilled.

10.5.2. Notwithstanding anything in this Article 10 to the contrary, the amounts set forth for the purchase of insurance hereunder are the minimum amounts to be purchased. Therefore, Owners or the Association, as the case may be, may purchase insurance in excess of the amounts set forth herein. The amounts set forth do not constitute a representation or warranty of any kind by Declarant or the Association as to the proper amount or kinds of insurance required.

10.5.3. Policies insuring the Common Property purchased pursuant to the requirements of this Article 10 shall provide that any insurance trust agreement shall be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omission of individual Owners who are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

#### 10.6. Fidelity Coverage

Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible for handling funds of the Association (whether or not they receive compensation), shall be maintained. Such coverage shall be in the form of fidelity bonds which meet the following requirements: (i) such bonds shall name the Association as an obligee and premiums therefor shall be paid by the Association; (ii) such bonds shall be written in an amount equal to at least three (3) months aggregate assessments for all Lots plus reserve funds, but in no event, less than Ten Thousand Dollars (\$10,000) for each such person; and (iii) such bonds shall contain

waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Notwithstanding the foregoing, in the event the Association determines that the cost of such insurance is economically unwarranted or is not obtainable, the Association may determine to either reduce the amount of such insurance, increase the deductible amount or discontinue coverage.

#### 10.7. Directors' and Officers' Liability Insurance

In addition to the other insurance required under this Section 10, the Board shall obtain directors' and officers' liability insurance, if reasonably available.

#### 10.8. Cancellation or Modification

All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days' prior written notice to the Association and to each first mortgage holder named in the mortgage clause.

### 11. PROVISIONS RELATING TO CONDEMNATION OR EMINENT DOMAIN PROCEEDINGS

#### 11.1. Deposit of Awards With Insurance Trustee

The taking of any portion of the Common Property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance resulting from the casualty and shall be deposited with the Insurance Trustee.

#### 11.2. Common Property

In the event the Association receives any award or payment arising from the taking of the Common Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Association and approved by Owners owning at least a majority of the Lots and the remaining balance thereof, if any, shall then be held by the Association.

### 12. PROVISIONS SETTING FORTH CERTAIN RIGHTS OF DECLARANT

Declarant reserves and shall have the right to enter into and transact within West Cape Estates any business necessary to consummate the sale, lease or encumbrance of Lots being developed and sold by Declarant in other portions of West Cape Estates and in other communities developed by Declarant, including the right to maintain models and a sales and/or leasing office, place signs of any size or kind, employ sales and leasing personnel and show Lots, and including the right to carry on construction activities of all types necessary to construct all buildings in West Cape Estates pursuant to these Protective Covenants. Any such models, sales office, signs and any other items pertaining to such sales efforts shall not be considered a part of West Cape Estates and shall remain the property of Declarant, as applicable. In addition, Declarant reserves and shall have the right to use the Common Property for marketing purposes. This Article 12 may not be suspended, superseded or modified in any manner by any amendment to these Protective Covenants, unless such amendment is consented to in writing by Declarant as long as either owns any portion

of the Property. This right of use and transaction of business as set forth herein may be assigned in writing by Declarant in whole or in part.

### 13. GENERAL PROVISIONS

#### 13.1. Duration

All of the covenants, agreements and restrictions covering the Property, including the land use covenants and the affirmative covenants to pay Operating Expenses, shall run with and bind the Property and shall inure to the benefit of and be binding upon Declarant, the Association, and all Owners, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date these Protective Covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless after the thirty (30) year term or any ten (10) year extension thereof an instrument signed by the persons or entities then owning two-thirds (2/3) of all Lots is recorded amongst the Public Records, agreeing to terminate said covenants and restrictions. No such instrument shall be effective, however, unless made and recorded at least one (1) year in advance of the effective date of such termination. The President shall execute and record in the public records of the County, twenty-five (25) years after the recording of these Protective Covenants, and every twenty-five (25) years thereafter, a Certificate stating that these Protective Covenants remain in full force and effect and specifying the real property which is encumbered by these Protective Covenants.

#### 13.2. Plan of Development

Declarant, the Association and all Owners and their respective grantees, successors or assigns, by acceptance of their instrument of conveyance for a Lot, acknowledge that West Cape Estates is being developed under a common plan as set forth in Article 2 herein and in the other Community Documents. Such parties further acknowledge that the easement rights, use covenants and obligations to pay Operating Expenses are an integral part of the common plan of development and are required to provide access to and from the various portions of West Cape Estates and publicly dedicated rights-of-way as well as the operation and maintenance of West Cape Estates. Accordingly, such parties hereby covenant that no amendment or termination of any document governing any property in West Cape Estates shall be made which will interfere with such common plan or the rights and obligations constituting an integral part of such common plan without the approval of the Association and, until the Turnover Date, of Declarant, as well.

#### 13.3. Compliance With Regulations of Public Bodies

The Association shall perform such acts and do such things as shall be lawfully required in the Common Property by any public body having jurisdiction thereof in order to comply with sanitary requirements, fire hazard requirements, zoning requirements, setback requirements, drainage requirements and other similar requirements designed to protect the public. The cost of the foregoing shall be an Operating Expense.

#### 13.4. Lawful Use of Land

The Association covenants and agrees that it will conform to and observe all ordinances, rules, laws and regulations of the County, the State of Florida, and the United States of America, and all public authorities and boards of officers relating to the Common Property and Improvements upon the same,

or use thereof, and will not during such time permit the same to be used for any illegal or immoral purpose, business or occupation.

### 13.5. Amendment and Modification

The process of amending or modifying these Protective Covenants shall be as follows:

13.5.1. Prior to Turnover Date. Until the Turnover Date, all amendments or modifications shall only be made by Declarant without the requirement of the consent of the Association, or the Owners; provided, however, that the Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.

13.5.2. After Turnover Date. After the Turnover Date, these Protective Covenants may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots within the Property; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots within the Property may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws, or by written action in accordance with the provisions of the Bylaws, to be evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

13.5.3. Scrivener's Error. Notwithstanding anything to the contrary herein contained, Declarant reserves the right to amend these Protective Covenants and any exhibits thereto so as to correct any scrivener's or other errors or omissions not materially affecting the rights of Owners, lienors, or mortgagees. Such amendment need not be approved by the Association, Owners, lienors, or mortgagees, whether or not elsewhere required for amendment. Such right shall pass to the Board after the Turnover Date.

13.5.4. No Impairment or Prejudice. Notwithstanding anything to the contrary herein contained, no amendment to these Protective Covenants shall be effective which shall impair or prejudice the rights or priorities of Declarant the Association, the South Florida Water Management District or any Institutional Mortgagee under these Protective Covenants or any other Community Document without the specific written approval of Declarant the Association, the South Florida Water Management District, or such Institutional Mortgagee(s) affected thereby. In addition, for as long as Declarant own any Lots in West Cape Estates, no amendment shall be passed which shall grant the Association, the right to approve or in any manner screen tenants or lessees of any Owner without the specific written approval of Declarant, as applicable. Any amendment that would affect the surface water management system, including the water management portions of the Common Property, must have the prior approval of the applicable governmental authority.

### 13.6. Subordination

Declarant and the Association agree that their respective interests in these Protective Covenants shall be subordinated to the lien and encumbrance of any existing mortgages and additional or subsequent mortgages obtained by Declarant for the purpose of the financing the construction of Improvements to take place in whole or in part upon West Cape Estates and any replacement mortgages. While the provisions of this Paragraph are self-operative, the Association nevertheless agrees to execute such instruments as may be necessary to evidence the subordination of its interest to such mortgages.

### 13.7. Severability

Invalidation of any one of these covenants or restrictions or of any of the terms and conditions herein contained, or the reduction in time by reason of any rule of law known as the "rule against perpetuities" shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law. In the event any court should hereafter determine any provisions as originally drafted herein in violation of the rule of law known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in these Protective Covenants shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, "measuring lives" shall be that of the members of the first Board of the Association.

### 13.8. Delegation

The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

### 13.9. Rights of Mortgagees

13.9.1. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Community Documents and the books, records and financial statements of the Association to Owners, Declarant and the holders, insurers or guarantors of any first mortgages encumbering Lots. In addition, evidence of insurance shall be issued to each Owner, and each mortgagee holding a mortgage encumbering a Lot upon written request to the Association.

13.9.2. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot, if applicable, the Association shall provide such Listed Mortgagee with timely written notice of the following:

13.9.2.1. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

13.9.2.2. Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot ; and

13.9.2.3. Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his or her obligations under the Community Documents, including, but not limited to, any delinquency in the payment of Assessments or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

13.9.3. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements of the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

#### 13.10. Owner Approval of Community Association Action

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of the Owners of two-thirds (2/3) of all Lots (at a duly called meeting called by the Members on behalf of the Association at which a quorum is present, or by written action in accordance with the provisions of the Bylaws) prior to the payment of or contracting for legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (i) the collection of Assessments;
- (ii) the collection of other charges pursuant to the Community Documents;
- (iii) the enforcement of the use and occupancy restrictions contained in the Community Documents;
- (iv) the enforcement of the restrictions on the sale and other transfer of Lots contained in the Community Documents;
- (v) in an emergency where waiting to obtain the approval of such Owners creates a substantial risk of irreparable injury to the Common Property or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of two-thirds [2/3] of the Owners); or
- (vi) filing a compulsory counterclaim.

#### 13.11. Declarant's Approval of Community Association Actions

If Declarant holds a Lot or Lots for sale, none of the following actions may be taken without approval in writing by Declarant, as applicable:

13.11.1. Assessment of Declarant as an Owner for capital improvements; and

13.11.2. Any action by the Association that would be detrimental to the sales of Lots by Declarant. The determination as to what actions would be detrimental to sales shall be in the sole discretion of Declarant; provided, however, that an increase in assessments for Operating Expenses without discrimination against Declarant, shall not be deemed to be detrimental to the sales of Lots.



### 13.12. Notices

Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) any Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Lot owned by such person; (ii) the Association, certified mail, return receipt requested, initially at 331 Cape Coral Parkway West, Suite C, Cape Coral, Florida 33914, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 331 Cape Coral Parkway West, Suite C, Cape Coral, Florida 33914, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners. Upon request of an Owner, the Association shall furnish to such Owner the then current address for Declarant as reflected by the Association records.

### 13.13. Enforcement

13.13.1. All Owners and residents shall be governed by and shall comply with the applicable Community Documents. The covenants and restrictions herein contained may be enforced by Declarant or the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder.

13.13.2. The Association shall have the right, after reasonable notice, to enter at a reasonable time, any premises in West Cape Estates to remove and abate any violation.

13.13.3. The failure by any party to enforce any covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision.

13.13.4. The Association may suspend, for a reasonable period of time, the rights of a Member or a Member's tenants, guests, or invitees, or both to use common areas and facilities; provided, however, such suspension shall not impair the right of an Owner or tenant to have vehicular and pedestrian ingress to and egress from his or her Lot, including, but not limited to, the right to park.

13.13.5. The Association may levy reasonable fines, not to exceed \$100.00 per violation, against any Member or any tenant, guest or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$2,500.00 in the aggregate.

13.13.6. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three Members appointed by the Board who are not officers, directors, or employees of the association, or the spouse, parent, child, or sibling of an officer, director or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees. The failure of the Board to object to Owners or other parties failure to comply with covenants or restrictions contained herein or in any

other of the Community Documents now or hereafter promulgated shall in no event be deemed to be a waiver by the Board or of any other party having an interest therein of its rights to object to same and to seek compliance therewith in accordance with the provisions of the Community Documents.

13.13.7. The requirements of notice and hearing before a committee shall not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay assessments or other charges when due.

13.13.8. The Association may suspend the voting rights of a Member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days.

#### 13.14. Captions, Headings and Titles

Article and Paragraph captions, headings and titles inserted throughout these Protective Covenants are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of these Protective Covenants.

#### 13.15. Context

Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa. Whenever reference is made to these Protective Covenants, Articles, Bylaws and Rules, or any other document pertaining to West Cape Estates, such reference shall include any and all amendments and supplements thereto.

#### 13.16. Disputes as to Use

In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in these Protective Covenants, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of West Cape Estates or any parts thereof in accordance with subparagraph 2.2.4.1 hereof shall be deemed a use which complies with these Protective Covenants and shall not be subject to a contrary determination by the Board.

#### 13.17. Incorporation of Community Documents

Any and all deeds conveying a Lot or any other portion of the Property shall be conclusively presumed to have incorporated therein all of the terms and conditions of the applicable Community Documents including, but not limited to, these Protective Covenants, whether or not the incorporation of the terms and conditions of the Community Documents is specifically set forth by reference in such deed. Acceptance by the grantee of such a deed shall be deemed to be acceptance by such grantee of all of the terms and conditions of the Community Documents.

### 13.18. Conflict

Notwithstanding anything to the contrary contained herein, in the event the terms and provisions of these Protective Covenants should conflict with the terms and provisions of any other West Cape Estates Document, the terms and provisions of these Protective Covenants shall control in every instance.

### 13.19. Security

The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be. Declarant shall not in any way or manner be held liable or responsible for any violation of these Protective Covenants by any person other than Declarant. Additionally, NEITHER DECLARANT NOR THE ASSOCIATION MAKE ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL MEMBERS AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, DECLARANT NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY HOME, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR RESIDENT, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, DECLARANT OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, ENTRY GATE OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES OR STANDARDS ESTABLISHED BY DECLARANT OR THE COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, ENTRY GATE OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER OR RESIDENT, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER, OWNER OR RESIDENT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO HOMES, AND TO THE CONTENTS OF HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS, ENTRY GATE OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

13.20. Assignment of Declarant's Rights.

Declarant shall have the right to assign in whole or part, any rights granted to them under these Protective Covenants.

IN WITNESS WHEREOF, these Protective Covenants have been signed by Declarant and the Association on the respective dates set forth below.

**DECLARANT:**

WEST CAPE DEVELOPMENT  
GROUP, L.L.C., a Florida limited liability company

**WITNESSES:**

Wendy Sartscher  
Signature of Witness #1

Wendy Sartscher  
Print Name of Witness #1

M. Malvezzi  
Signature of Witness #2

M. Malvezzi  
Print Name of Witness #2

By: Robert V. Peterson, Mgr

Printed Name: Robert V. Peterson

Its: manager

(CORPORATE SEAL)

**ASSOCIATION:**

WEST CAPE ESTATES COMMUNITY  
ASSOCIATION, INC., a Florida not-for-profit  
corporation

Wendy Sartscher  
Signature of Witness #1

Wendy Sartscher  
Print Name of Witness #1

M. Malvezzi  
Signature of Witness #2

M. Malvezzi  
Print Name of Witness #2

By: Robert V. Peterson, Pres

Printed Name: Robert V. Peterson

Its: manager President

(CORPORATE SEAL)

STATE OF FLORIDA

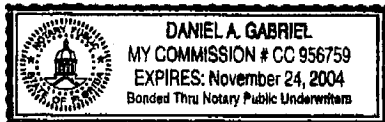
COUNTY OF LEE

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared ROBERT PETERSON, as MANAGER of WEST CAPE DEVELOPMENT GROUP, L.L.C., a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 18 day of NOVEMBER, 2003.

My commission expires:

Daniel A. Gabriel  
Notary Public



\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Number

STATE OF FLORIDA

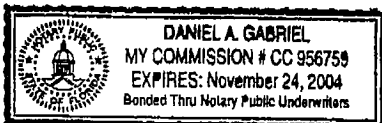
COUNTY OF LEE

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared ROBERT PETERSON, as PRESIDENT of WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 18 day of NOVEMBER, 2003.

My commission expires:

Daniel A. Gabriel  
Notary Public



\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Number

Declaration of Protective Covenants and Restrictions  
West Cape Estates

TABLE OF EXHIBITS

Exhibit A	-	Legal Description of Property
Exhibit B	-	Proposed Site Plan of West Cape Estates
Exhibit C	-	Legal Description of Common Property
Exhibit D	-	Articles of Incorporation of the Association
Exhibit E	-	Bylaws of the Association

## LEGAL DESCRIPTION

(O.R. BOOK 3590, PAGES 554-555)

ALL OF BLOCK 5219, LESS AND EXCEPT WESTERLY RIGHT-OF-WAY AND THAT PORTION AS REPLATTED INTO UNIT 76, THE ISLANDS, AS RECORDED IN PLAT BOOK 35, PAGES 121 THROUGH 129, INCLUSIVE,

AND

ALL OF BLOCK 5225 AND ALL OF BLOCK 5226, LESS AND EXCEPT THAT PORTION AS REPLATTED INTO UNIT 76, THE ISLANDS, AS RECORDED IN PLAT BOOK 35, PAGES 121 THROUGH 129, INCLUSIVE,

ALL IN UNIT 81, CAPE CORAL, A SUBDIVISION AS RECORDED IN PLAT BOOK 24, PAGES 102 THROUGH 112, INCLUSIVE, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

TOGETHER WITH

(O.R. BOOK 3878, PAGES 3371-3374)

THAT PORTION OF ALLEY, LYING WEST OF THE WESTERLY RIGHT-OF-WAY LINE OF OLD BURNT STORE ROAD AS SHOWN IN SAID UNIT 81, CAPE CORAL, A SUBDIVISION AS RECORDED IN PLAT BOOK 24, PAGES 102 THROUGH 112, INCLUSIVE, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 5225; THENCE RUN S 00°34'51" W, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF OLD BURNT STORE ROAD, FOR 175.00 FEET TO THE POINT OF BEGINNING AND THE POINT OF CURVATURE OF A CURVE; THENCE RUN SOUTHWESTERLY ALONG THE CURVE, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00" (CHORD = S 45°34'51" W, 35.36 FEET) FOR 39.27 FEET TO THE POINT OF TANGENCY; THENCE RUN N 89°25'09" W ALONG THE SOUTHERLY RIGHT-OF-WAY OF BLOCK 5225 FOR 245.00 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 5225; THENCE RUN S 00°34'51" W ALONG THE EASTERLY RIGHT-OF-WAY OF BLOCK 5219 FOR 761.12 FEET TO THE SOUTHEASTERLY CORNER OF SAID BLOCK 5219; THENCE RUN S 89°19'42" E FOR 20.00 FEET TO THE SOUTHWEST CORNER OF BLOCK 5226; THENCE RUN N 00°34'51" E ALONG THE WESTERLY RIGHT-OF-WAY OF BLOCK 5226 FOR 716.10 FEET TO THE POINT OF CURVATURE OF A CURVE; THENCE RUN NORTHEASTERLY ALONG THE CURVE HAVING A RADIUS OF 25.00 AND A CENTRAL ANGLE OF 90°00'00" (CHORD = N 45°34'51" E, 35.36 FEET) FOR 39.27 FEET TO THE POINT OF TANGENCY; THENCE RUN S 89°25'09" E ALONG THE NORTHERLY RIGHT-OF-WAY OF BLOCK 5226 FOR 200.00 FEET TO THE POINT OF CURVATURE OF A CURVE; THENCE RUN SOUTHEASTERLY ALONG THE CURVE HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00" (CHORD = S 44°25'09" E, 35.36 FEET) FOR 39.27 FEET TO THE POINT OF TANGENCY; THENCE RUN N 00°34'51" E ALONG THE WESTERLY RIGHT-OF-WAY OF OLD BURNT STORE ROAD, FOR 70.00 FEET TO THE POINT OF BEGINNING.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT A THE NORTHEAST CORNER OF BLOCK 5225 AS SHOWN ON THE PLAT OF CAPE CORAL UNIT 81, RECORDED IN PLAT BOOK 24 AT PAGES 102 THROUGH 112 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; SAID POINT ALSO BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF OLD BURNT STORE ROAD (100' RIGHT-OF-WAY);

THENCE RUN SOUTH 00°34'51" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND ALONG THE EASTERLY LINES OF BLOCK 5225 AND BLOCK 5226 AS SHOWN ON THE SAID PLAT OF CAPE CORAL UNIT 81, FOR A DISTANCE OF 961.35 FEET TO A POINT ON THE NORTH LINE OF TRACT "K" AS SHOWN ON THE PLAT OF CAPE CORAL UNIT 76 THE ISLANDS, RECORDED IN PLAT BOOK 35 AT PAGES 121 THROUGH 129 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

THENCE RUN NORTH 89°19'42" WEST, ALONG THE NORTH LINES OF TRACT "K" AND TRACT "J", AS SHOWN ON THE SAID PLAT OF CAPE CORAL UNIT 76 THE ISLANDS, FOR A DISTANCE OF 884.21 FEET TO A POINT ON THE EAST LINE OF THE 200' WIDE SPREADER WATERWAY, AS SHOWN ON THE PLAT OF CAPE CORAL SREADER WATERWAY, RECORDED IN PLAT BOOK 32 AT PAGES 48 THROUGH 111, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

THENCE RUN NORTH 00°34'51" EAST, ALONG SAID EAST LINE, FOR A DISTANCE OF 959.95 FEET TO A POINT ON THE NORTH LINE OF BLOCK 5219, AS SHOWN ON THE SAID PLAT OF CAPE CORAL UNIT 81;

THENCE RUN SOUTH 89°25'09" EAST, ALONG THE NORTH LINES OF BLOCK 5219 AND BLOCK 5225 OF SAID PLAT, FOR A DISTANCE OF 884.21 FEET TO THE POINT OF BEGINNING; CONTAINING 19.500 ACRES, MORE OR LESS.





## **LEGAL DESCRIPTION OF THE COMMON PROPERTY**

Tract "A", as a recreation area, with responsibility for maintenance.

Tract "B", as a water management area, for the purposes shown hereon, with responsibility for maintenance.

Tract "C", as a private road right-of-way, subject to a public utility easement and drainage easement, with responsibility for maintenance.

Tract "D" and "E", as open space, with responsibility for maintenance.

All drainage easements (D.E.), walkway easements (W.E.), landscape buffer easements (L.B.E.), and Lake Maintenance Easements (L.M.E.), with responsibility for maintenance.

According to the Plat of West Cape Estates at Plat Book 75, Pages 74 through 76 recorded in the Public Records of Lee County, Florida.

Exhibit C - Page 1 of 1

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Ernest W. Sturges, Jr., Esq.  
Goldman, Tiseo & Sturges, P.A.  
701 JC Center Court, Suite 3  
Port Charlotte, Florida 33954

INSTR # 2012000232824, Pages 2  
Doc Type RES, Recorded 10/24/2012 at 08:43 AM,  
Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$18.50  
Deputy Clerk SPINNACE  
#3

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**CERTIFICATE OF AMENDMENT TO**  
**BY-LAWS OF**  
**WEST CAPE ESTATES**

I HEREBY CERTIFY that the following amendment to the By-laws of West Cape Estates was duly adopted by the Association membership at the duly noticed annual members' meeting of the Association on the 4<sup>th</sup> day of October, 2012. Said amendment was approved by a property percentage of voting interests of the Association. The Declaration of Protective Covenants and Restrictions is recorded at O.R. Book 4134, Pages 4354 et. seq., of the Public Records of Lee County, Florida.

**Article 12.3, Bylaws** is hereby amended to read as follows:

12.3 After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, these By-Laws may be amended with the approval of (i) the majority two-thirds (66 2/3%) of the Board of Directors; and (ii) seventy-five percent (75%) of the Owners of the Association present in person or by proxy at a meeting duly called for that purpose of all of the votes in the Association. Notwithstanding the foregoing, after the Turnover Date these By-Laws may be amended to change the number of directors on the Board by two-thirds percent (66 2/3%) of the Board acting alone. Such change shall not require the approval of the Members. Any change in the number of directors shall not take effect until the next Annual Members Meeting.

**Article 15.1, Bylaws** is hereby amended to read as follows:

15.1 Florida Statutes. Whenever these By-Laws refers to Florida Statutes, it shall be deemed to refer to the Florida Statutes as same may be amended from time to time, as they exist on the date these By-Laws are recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

Executed this 4<sup>th</sup> day of October, 2012, at Lee County, Florida.

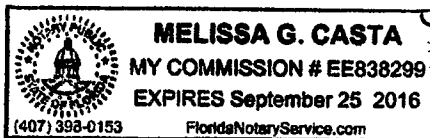
West Cape Estates

By: [Signature]  
Name: Michael Mitchell  
Its: President

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2012, by Michael Mitchell, who is personally known to me or produced \_\_\_\_\_ as identification.

SEAL



Melissa G Casta  
NOTARY PUBLIC

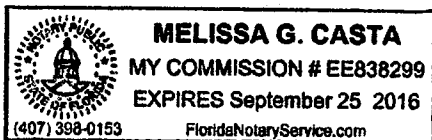
Melissa G Casta  
Printed name of notary

By: [Signature]  
Name: William Thompson  
Its: Secretary

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2012, by William Thompson, who is personally known to me or produced \_\_\_\_\_ as identification.

SEAL



Melissa G Casta  
NOTARY PUBLIC

Melissa G Casta  
Printed name of notary

**BY-LAWS  
OF  
WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC.**

1. Name and Location.

The name of the corporation is WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC. ("Association"). The initial principal office of the corporation shall be located at 331 Cape Coral Parkway West, Suite C, Cape Coral, FL 33914 or at such other location designated by the Board of Directors (the "Board") from time to time.

2. Definitions.

The definitions contained in the Declaration of Protective Covenants and Restrictions for West Cape Estates (the "Declaration") relating to the residential community known as West Cape Estates recorded, or to be recorded, in the Public Records of Lee County, Florida, are incorporated herein by reference and made a part hereof. In addition to the terms defined in the Declaration, the following terms shall have the meanings set forth below:

"Annual Members Meeting" shall have the meaning assigned to such term in Section 3.2 of these By-Laws.

"By-Laws" shall mean these By-Laws as amended from time to time.

"Member" shall mean each Home Owner and Declarant.

"Minutes" shall mean the minutes of all Member and Board meetings, which shall be in the form required by the Florida Statutes. In the absence of governing Florida Statutes, the Board shall determine the form of the Minutes.

"Official Records" shall mean all records required to be maintained by Association pursuant to Section 617.303(4) of the Florida Statutes, as amended from time to time.

"Special Members Meeting" shall have the meaning assigned to such term in Section 3.3 of these By-Laws.

"Turnover Date" shall mean the date the Declarant relinquishes control of the Board and when Members other than the Declarant are entitled to elect at least a majority of the Directors of the Board and shall occur within three months after 90% of the Lots in West Cape Estates have been conveyed to Members, or at such prior time as the Declarant elects in writing and delivered to the Association. For purposes of this definition, "Members" other than the Declarant shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

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"Voting Interests" shall mean the voting rights held by the Members and Declarant.

3. Members.

3.1. Voting Interests. Each Home Owner and Declarant shall be a Member of the Association. No person who holds an interest in a Home only as security for the performance of an obligation shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Home. There shall be one vote appurtenant to each Home. For the purposes of determining who may exercise the Voting Interest associated with each Home, the following rules shall govern:

3.1.1. Home Owned By Husband and Wife. Either the husband or wife (but not both) may exercise the Voting Interest with respect to a Home. In the event the husband and wife cannot agree, neither may exercise the Voting Interest.

3.1.2. Trusts. In the event that any trustee holds title to a Home, the Association shall have no obligation to review the trust agreement with respect to such trust; however the Trustee of such trust shall designate a person who shall be treated as the Member who can exercise the Voting Interest associated with such Home.

3.1.3. Corporations. If a Home is owned by a corporation, the corporation shall designate a person, an officer, employee, or agent who shall be treated as the Member who can exercise the Voting Interest associated with such Home.

3.1.4. Partnerships. If a Home is owned by a limited partnership, any one of the general partners shall be designated to exercise the Voting Interest associated with such Home. By way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such limited partnership. If a Home is owned by a general partnership, any one of the general partners may exercise the Voting Interest associated with such Home. In the event of a conflict among general partners entitled to exercise a Voting Interest, the Voting Interest for such Home cannot be exercised.

3.1.5. Multiple Individuals. If a Home is owned by more than one individual, any one of such individuals may exercise the Voting Interest with respect to such Home. In the event that there is a conflict among such individuals, the Voting Interest for such Home cannot be exercised.

3.1.6. Liability of the Association. The Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which the Association, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as the Association acts in good faith, the Association shall have no liability or obligation with respect to the exercise of Voting Interests, and no election shall be invalidated (in the absence of fraud) on the basis that the Association permitted or denied any person the right to exercise a Voting Interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

3.2. Annual Meetings. The annual meeting of the Members (the "Annual Members Meeting") shall be held at least once each calendar year on a date, at a time, and at a place to be determined by the Board. The election of Directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting.

3.3. Special Meetings of the Members. Special meetings of the Members (a "Special Members Meeting") may be called by the President, a majority of the Board, or upon written request of twenty-five percent (25%) of the Voting Interests of the Members. The business to be conducted at a Special Members Meeting shall be limited to the extent required by the Florida Statutes.

3.4. Notice of Members Meetings. Written notice of each Members Meeting shall be given by, or at the direction of, any officer of the Board or any management company retained by the Association. A copy of the notice shall be mailed to each Member entitled to vote, postage prepaid, not less than ten (10) days before the meeting (provided, however, in the case of an emergency, two (2) days' notice will be deemed sufficient). The notice shall be addressed to the Member's address last appearing on the books of the Association. The notice shall specify the place, day, and hour of the meeting and, in the case of a Special Members Meeting, the purpose of the meeting. Alternatively, and to the extent not prohibited by the Florida Statutes, the Board may adopt from time to time, other procedures for giving notice to the Members of the Annual Members Meeting or a Special Members Meeting. By way of example, and not of limitation, such notice may be included in a newsletter sent to each Member by the Association.

3.5. Quorum of Members. A quorum shall be established by the presence, in person or by proxy, of Members entitled to cast forty percent (40%) of the Membership Voting Interests except as otherwise provided in the Articles, the Declaration, or these By-Laws. Notwithstanding any provision herein to the contrary, in the event that technology permits Members to participate in Members Meetings and vote on matters by teleconferencing or electronically, then the Board shall have authority, without the joinder of any other party, to revise this provision to establish appropriate quorum requirements.

3.6. Adjournment of Members Meetings. If a quorum shall not be present at any Members Meeting, the meeting shall be adjourned as provided in the Florida Statutes. In the absence of a provision in the Florida Statutes, the Members present shall have power to adjourn the meeting and reschedule it on another date.

3.7. Action of Members. Decisions that require a vote of the Members must be made by a concurrence of a majority of the Voting Interests present in person or by proxy, represented at a meeting at which a quorum has been obtained unless provided otherwise in the Declaration, the Articles, or these By-Laws.

3.8. Proxies. At all Members Meetings, Members may vote their Voting Interests in person or by proxy. All proxies shall comply with the provisions of Section 720.306(6) of the Florida Statutes, as amended from time to time, be in writing, and be filed with the Secretary at, or prior to, the meeting. Every proxy shall be revocable prior to the meeting for which it is given.

4. Board of Directors.

4.1. Number. The affairs of the Association shall be managed by a Board consisting of not less than three (3) nor more than seven (7) persons. Board members appointed by Declarant need not be Members of The Association. Board members elected by Home Owners must be Members of The Association.

4.2. Term of Office. The election of Directors shall take place after Declarant no longer has the authority to appoint the Board and shall take place at the Annual Members Meeting or on the Turnover Date. Directors shall be elected for a term ending upon the election of new Directors at the following Annual Members Meeting (except that the term of the Board appointed by Declarant shall extend until the date designated by Declarant, or until the Turnover Date).

4.3. Removal. Any vacancy created by the resignation or removal of a Board member appointed by Declarant shall be replaced by Declarant. Declarant may replace or remove any Board member appointed by Declarant in Declarant's sole and absolute discretion. In the event of death or resignation of a Director elected by the Members other than Declarant, the remaining Directors may fill such vacancy. Directors elected by Members may be removed, with or without cause, by the vote or agreement in writing of Members holding a majority of the Voting Interests. The notice of a meeting of the Members to recall a Director or Directors shall state the specific Directors sought to be removed. A proposed removal of a Director at a meeting shall require a separate vote for each Director sought to be removed. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. If removal is effected at a meeting, any vacancies created thereby shall be filled by the Members at the same meeting. Any Director who is removed from the Board shall not be eligible to stand for reelection until the next annual meeting of the Members. Any Director removed from office shall turn over to the Board within 72 hours any and all records of the Association in his or her possession. If a Director who is removed shall not relinquish his office or turn over records as required, the circuit court in Lee county may summarily order the Director to relinquish his office and turn over Association records upon application of any Member.

4.4. Compensation. No Director shall receive compensation for any service rendered as a Director to the Association; provided, however, any Director may be reimbursed for actual expenses incurred as a Director.

4.5. Appointment and Election of Directors. Until the Turnover Date, Declarant shall have the unrestricted power to appoint all Directors of the Association. From and after the Turnover Date, or such earlier date determined by Declarant in its sole and absolute discretion, the Members shall elect a majority of Directors of the Association at or in conjunction with the Annual Members Meeting of the Members. After the Turnover Date, the Declarant shall be entitled to appoint one Director to the Board so long as Declarant holds any Lot for sale in the ordinary course of business.

4.6. Election. Election to the Board shall be by secret written ballot, unless unanimously waived by all Members present. The persons receiving the largest numbers of votes shall be elected. Cumulative voting is not permitted.

4.7. Fiduciary Duty of Directors. Directors shall act in good faith in the performance of all duties.



5. Meetings of Directors.

5.1. Regular Meetings. Regular meetings of the Board shall be held on a schedule adopted by the Board from time to time. Meetings shall be held at such place, hour, and date as may be fixed, from time to time, by resolution of the Board.

5.2. Special Meetings. Special meetings of the Board shall be held when called by the President, or by any two (2) Directors. Each Director shall be given not less than two (2) days' notice except in the event of an emergency. Notice may be waived. Attendance shall be a waiver of notice. Meetings by telephonic speaker are permitted.

5.3. Emergencies. In the event of an emergency involving immediate danger of injury or death to any person or damage to property, if a meeting of the Board cannot be immediately convened to determine a course of action, the President or, in his absence, any other officer or director, shall be authorized to take such action on behalf of the Association as shall be reasonably required to appropriately respond to the emergency situation, including the expenditure of the Association funds in the minimum amount as may be reasonably required under the circumstances. The authority of officers to act in accordance herewith shall remain in effect until the first to occur of the resolution of the emergency situation or a meeting of the Board convened to act in response thereto.

5.4. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting, at which a quorum is present, shall be action of the Board.

5.5. Open Meetings. Meetings of the Board shall be open to all Members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney client privilege. Members shall be permitted to participate in the meeting only with Board acknowledgment or upon advance request through an item properly placed on the Board meeting agenda.

5.6. Voting. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. Board Members shall cast votes in the manner provided in the Florida Statutes. In the absence of a statutory provision, the Board shall establish the manner in which votes shall be cast.

5.7. Notice of Board Meetings. Notices of meetings of the Board shall be posted in a conspicuous place on the Common Areas at least 48 hours in advance, except in an event of an emergency. Alternatively, notice may be given to Members in any other manner provided by Florida Statute. Notices of any meetings of the Board at which Assessments against Homes are to be established shall specifically contain a statement that Assessments shall be considered and a statement of the nature of such Assessments.

5.8. Committee Meetings. Meetings of any committee or other similar body, where a final decision will be made regarding the expenditure of Association funds, and meetings of the Architectural Control Committee empowered to approve or disapprove architectural decisions with respect to a Lot owned by a

Member shall follow the quorum, notice, open meeting and voting requirements set forth in subparagraphs 5.4, 5.5, 5.6 and 5.7 above.

6. Powers and Duties of the Board.

6.1. Powers. The Board shall, subject to the limitations and reservations set forth in the Declaration and Articles, have the powers reasonably necessary to manage, operate, maintain and discharge the duties of the Association, including, but not limited to, the power to cause the Association to do the following:

6.1.1. General. Exercise all powers, duties and authority vested in or delegated to the Association by law and in these By-Laws, the Articles, and the Declaration, including, without limitation, adopt budgets, levy Assessments, and enter into contracts with Service Providers for Telecommunication Services.

6.1.2. Rules and Regulations. Adopt, publish, promulgate and enforce rules and regulations governing the use of West Cape Estates by the Members, tenants and their guests and invitees, and to establish penalties and/or fines for the infraction thereof subject only to the requirements of the Florida Statutes, if any.

6.1.3. Enforcement. Suspend the right of use of the Common Areas (other than for vehicular and pedestrian ingress and egress and for utilities) of a Member during any period in which such Member shall be in default in the payment of any Assessment or charge levied, or collected, by the Association.

6.1.4. Declare Vacancies. Declare the office of a member of the Board to be vacant in the event such Member shall be absent from three (3) consecutive regular Board meetings.

6.1.5. Hire Employees. Employ, on behalf of the Association, managers, independent contractors, or such other employees as it deems necessary, to prescribe their duties and delegate to such manager, contractor, or other person or entity, any or all of the duties and functions of the Association and/or its officers.

6.1.6. Common Areas. Dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of, the Common Areas to any public agency, entity, authority, utility or other person or entity for such purposes and subject to such conditions as it determines and as provided in the Declaration; and acquire, sell, operate, lease, manage and otherwise trade and deal with property, real and personal, including the Common Areas, as provided in the Declaration, and with any other matters involving the Association or its Members, on behalf of the Association or the discharge of its duties, as may be necessary or convenient for the operation and management of the Association and in accomplishing the purposes set forth in the Declaration.

6.1.7. Granting of Interest. Grant licenses, easements, permits, leases, or privileges to any individual or entity, which affect Common Areas and to alter, add to, relocate or improve the Common Areas as provided in the Declaration.

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6.1.8. Financial Reports. Prepare all financial reports required by the Florida Statutes.

6.2. Vote. The Board shall exercise all powers so granted except where the Declaration, Articles or these By-Laws specifically require a vote of the Members.

6.3. Limitations. Until the Turnover Date, Declarant shall have and is hereby granted a right to disapprove or veto any such action, policy, or program proposed or authorized by the Association, the Board, the Architectural Control Committee, any committee of the Association, or the vote of the Members. This right may be exercised by Declarant at any time within ten (10) days following a meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to veto proposed actions but shall not extend to the requiring of any action or counteraction on behalf of the Association, the Board, the Architectural Control Committee or any committee of the Association.

7. Obligations of the Association. The Association, subject to the provisions of the Declaration, Articles, and these By-Laws, shall discharge such duties as necessary to operate the Association pursuant to the Declaration, including, but not limited to, the following:

7.1. Official Records. Maintain and make available all of the following Official Records:

7.1.1 Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace.

7.1.2 A copy of these Bylaws and each amendment.

7.1.3 A copy of the Articles of Incorporation of the Association and amendments.

7.1.4 A copy of the Declaration and each amendment thereto.

7.1.5 A copy of the current Rules and Regulations of the Association.

7.1.6 The minutes of all meetings of the Board and of the Members, which minutes must be retained for at least 7 years.

7.1.7 A current roster of all Members and their mailing addresses and Lot numbers.

7.1.8 All of the Associations's insurance policies or a copy thereof, which policies must be retained for at least 7 years.

7.1.9 A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of 1 year.

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7.1.10 The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

7.1.10.1 Accurate, itemized, and detailed records of all receipts and expenditures.

7.1.10.2 A current account and a periodic statement of the account for each Member, designating the name and current address of each Member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the Member, the date and amount of each payment on the account, and the balance due.

7.1.10.3 All tax returns, financial statements, and financial reports of the Association.

7.1.10.4 Any other records that identify, measure, record or communicate financial information.

7.2 Inspection and Copying of Records. The Official Records shall be maintained within the State of Florida and must be open to inspection and available for photocopying by Members or their authorized agents at reasonable time and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the Official Records available for inspection or copying in the community.

7.2.1 The failure of an Association to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the Association willfully failed to comply.

7.2.2 A Member who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply. The minimum damages are to be \$50.00 per calendar day up to 10 days, the calculation to begin on the 11<sup>th</sup> business day after receipt of the written request.

7.2.3 The Association may adopt reasonable written rules governing the frequency, time, location, notice and manner of inspections, and may impose fees to cover the costs of providing copies of the Official Records, including the costs of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to Members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

7.3 Financial Reporting. The Association shall prepare an annual financial report within 60 days after the close of the fiscal year. The Association shall, within the time limits set forth in subsection 7.2 above, provide each Member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member. The financial report must consist of either:

7.3.1 Financial statements presented in conformity with generally accepted accounting principles; or

7.3.2 A financial report of actual receipts and expenditures, cash basis, which report must show:

7.3.2.1 The amount of receipts and expenditures by classification; and

7.3.2.2 The beginning and ending cash balances of the Association.

7.4 Supervision. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.

7.5 Assessments and Fines. Fix and collect the amount of the Assessments and fines; take all necessary legal action; and pay, or cause to be paid, all obligations of the Association or where the Association has agreed to do so, of the Members.

7.6 Enforcement. Enforce the provisions of the Declaration, Articles, these By-Laws, and Rules and Regulations.

8. Officers and Their Duties.

8.1. Officers. The officers of this the Association shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer. There may also be one or more Assistant Secretaries and/or Assistant Treasurers, as the Board deems appropriate.

8.2. Election of Officers. Except as set forth below, the election of officers shall be by the Board and shall take place at the first meeting of the Board following each Annual Members Meeting.

8.3. Term. The officers named in the Articles shall serve until their replacement by the Board. The officers of the Association shall hold office until their successors are appointed or elected unless such officer shall sooner resign, be removed, or otherwise disqualified to serve.

8.4. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board. Such resignation shall

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take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

8.6. Vacancies. A vacancy in any office shall be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the replaced officer.

8.7. Multiple Offices. The office of President and Vice-President shall not be held by the same person. All other offices may be held by the same person.

8.8. Duties. The duties of the officers are as follows:

8.8.1. President. The President shall preside at all meetings of the Association and Board, sign all leases, mortgages, deeds and other written instruments and perform such other duties as may be required by the Board. The President shall be a member of the Board.

8.8.2. Vice President. The Vice President shall act in the place and stead of the President in the event of the absence, inability or refusal to act of the President, and perform such other duties as may be required by the Board.

8.8.3. Secretary. The Secretary shall record the votes and keep the Minutes of all meetings and proceedings of the Association and the Board; keep the corporate seal of the Association and affix it on all papers required to be sealed; serve notice of meetings of the Board and of the Association; keep appropriate current records showing the names of the Members of the Association together with their addresses; and perform such other duties as required by the Board.

8.8.4. Treasurer. The Treasurer shall cause to be received and deposited in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; sign, or cause to be signed, all checks, and promissory notes of the Association; cause to be kept proper books of account and accounting records required pursuant to the provisions of Section 720.303 of the Florida Statutes cause to be prepared in accordance with generally accepted accounting principles all financial reports required by the Florida Statutes; and perform such other duties as required by the Board.

9. Committees.

9.1. General. The Board may appoint such committees as deemed appropriate. The Board may fill any vacancies on all committees.

9.2. Architectural Control Committee. Declarant shall have the sole right to appoint the members of the Architectural Control Committee until the Turnover Date. Upon expiration of the right of Declarant to appoint members of the Architectural Control Committee, the Board shall appoint the members of the Architectural Control Committee. As provided under the Declaration, the Association shall have the authority and standing to seek enforcement in courts of competent jurisdiction any decisions of the Architectural Control Committee.

10. Records. The official records of the Association shall be available for inspection by any Member at the principal office of the Association. Copies may be purchased, by a Member, at a reasonable cost.

11. Corporate Seal. The Association shall have an impression seal in circular form.

12. Amendments.

12.1. General Restrictions. Notwithstanding any other provision herein to the contrary, no amendment to these By-Laws shall affect the rights of Declarant unless such amendment receives the prior written consent of Declarant, which may be withheld for any reason whatsoever. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to these By-Laws, then the prior written consent of such entity or agency must also be obtained. No amendment shall be effective until it is recorded in the Public Records.

12.2. Prior to the Turnover Date. Prior to the Turnover Date, Declarant shall have the right to amend these By-Laws as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Declarant's right to amend under this provision is to be construed as broadly as possible. In the event that the Association shall desire to amend these By-Laws prior to the Turnover Date, the Association must first obtain Declarant's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Declarant may be adopted by the Association pursuant to the requirements for amendments from and after the Turnover Date. Thereafter, Declarant shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

12.3. After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, these By-Laws may be amended with the approval of (i) two-thirds (66 2/3%) of the Board; and (ii) seventy-five percent (75%) of all of the votes in the Association. Notwithstanding the foregoing, after the Turnover Date these By-Laws may be amended to change the number of directors on the Board by two-thirds percent (66 2/3%) of the Board acting alone. Such change shall not require the approval of the Members. Any change in the number of directors shall not take effect until the next Annual Members Meeting.

13. Conflict. In the case of any conflict between the Articles and these By-Laws, the Articles shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

14. Fiscal Year. The first fiscal year shall begin on the date of incorporation and end on December 31 of that year. Thereafter, the fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

15. Miscellaneous.

15.1. Florida Statutes. Whenever these By-Laws refers to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date these By-Laws are recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

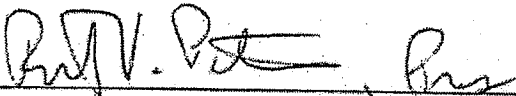
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15.2. Severability. Invalidation of any of the provisions of these By-Laws by judgment or court order shall in no way affect any other provision, and the remainder of these By-Laws shall remain in full force and effect.

WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC.

By:   
Robert V. Peterson, President

Attest:   
Kathleen M. Peterson, Secretary

(CORPORATE SEAL)



**ARTICLES OF INCORPORATION  
OF  
WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC.  
(A CORPORATION NOT FOR PROFIT)**

In compliance with the requirements of the Laws of the State of Florida, and for the purpose of forming a corporation not for profit, the undersigned does hereby acknowledge:

1. Name of Corporation. The name of the corporation is WEST CAPE ESTATES COMMUNITY ASSOCIATION, INC. ("Association").
2. Principal Office. The principal office of the Association is 331 Cape Coral Parkway West, Unit C, Cape Coral, FL 33914, or such other location as designated by the Board of Directors of the Association.
3. Registered Office - Registered Agent. The street address of the Registered Office of the Association is 2375 Tamiami Trail North, Suite #310, Naples, Florida 34103. The name of the Registered Agent of the Association is Jane Yeager Cheffy, Attorney at Law.
4. Definitions. A declaration entitled Declaration of Protective Covenants and Restrictions for West Cape Estates (the "Declaration") will be recorded in the Public Records of Lee County, Florida, and shall govern all of the operations of a community to be known as West Cape Estates. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.
5. Purpose of the Association. The Association is formed to: (a) provide for ownership, operation, maintenance and preservation of the Common Areas, and improvements thereon; (b) perform the duties delegated to it in the Declaration; (c) administer the interests of the Association and the Members; and (d) promote the health, safety and welfare of the Members.
6. Not for Profit. The Association is a not for profit Florida corporation and does not contemplate pecuniary gain to, or profit for, its Members, Board of Directors, or officers.
7. Powers of The Association. The Association shall, subject to the limitations and reservations set forth in the Declaration, have all the powers, privileges and duties reasonably necessary to discharge its obligations, including, but not limited to, the following:
  - 7.1. To perform all the duties and obligations of the Association set forth in the Declaration, these Articles, and the By-Laws, including, but not limited to, operating and maintaining the common property.
  - 7.2. To enforce, by legal action or otherwise, the provisions of the Declaration, these Articles, the By-Laws, and the rules, regulations, covenants, restrictions and/or agreements governing or binding the Association.

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7.3. To fix, levy, collect and enforce payment, by any lawful means, of all Assessments payable pursuant to the terms of the Declaration, these Articles, and the By-Laws.

7.4. To pay all Operating Costs, including, but not limited to, all licenses, taxes or governmental charges levied or imposed against the Common Area or other property of the Association, and establish reserves for deferred maintenance or capital expenditures.

7.5. To acquire (by gift, purchase, or otherwise), annex, own, hold, improve, build upon, operate, maintain, convey, grant rights and easements, sell, convey, dedicate, lease, transfer or otherwise dispose of real or personal property (including but not limited to the Common Areas) in connection with the functions of the Association except as limited by the Declaration.

7.6. To borrow money, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money or debts incurred.

7.7. To dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of, the Common Areas to any public agency, entity, authority, utility or other person or entity for such purposes and subject to such conditions as it determines subject only to requirements in the Declaration, if any.

7.8 To participate in mergers and consolidations with other non-profit corporations organized for the same purposes.

7.9 To adopt, publish, promulgate or enforce rules, regulations, covenants, restrictions or agreements governing the Association, the Common Areas, Parcels and Homes as provided in the Declaration and to effectuate all of the purposes for which the Association is organized.

7.10 To have and to exercise any and all powers, rights and privileges which a not-for-profit corporation organized under the Laws of the State of Florida may now, or hereafter, have or exercise.

7.11 To employ personnel and retain independent contractors to contract for management of the Association and the Common Areas as provided in the Declaration and to delegate in such contract all or any part of the powers and duties of the Association.

7.12 To contract for services to be provided to, or for the benefit of, the Association, Members, and the Common Areas as provided in the Declaration such as, but not limited to, Telecommunication Services, maintenance, garbage pick-up, and utility services.

7.13 To establish committees and delegate certain of its functions to those committees.

7.14 To hold all funds and property owned and acquired by the Association in the name of the Association for the benefit of Members in accordance with the provisions of the Declaration, these Articles, and the By-Laws.

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7.15. To bring suit and to defend any legal, equitable or other action brought against the Association.

7.16 To own, operate and maintain the storm water management system and to collect regular and special assessments for that purpose.

8. Member & Voting Rights. All owners of property in West Cape Estates shall automatically become members of this Association. Members and Declarant shall have the voting rights set forth in these Articles, the Declaration and the By-Laws.

9. Board of Directors. The affairs of the Association shall be managed by a Board of odd number with not less than three (3) nor more than seven (7) members. The initial number of directors shall be three (3). Board members shall be appointed and/or elected as stated in the By-Laws. The election of Directors shall be held at the annual meeting of the Members. Directors shall be elected for a term expiring on the date of the next Annual Members Meeting. The names and addresses of the members of the first Board who shall hold office until their successors are appointed or elected, or until removed, are as follows:

NAME	ADDRESS
ROBERT V. PETERSON	5108 S.W. 12 <sup>th</sup> Place Cape Coral, FL 33914
KATHLEEN PETERSON	5108 S.W. 12 <sup>th</sup> Place Cape Coral, FL 33914
LAWRENCE J. PITONI	3065 Brockport Road Spencerport, NY 14559

10. Dissolution. In the event of the dissolution of the Association other than incident to a merger or consolidation, any member may petition the Circuit Court having jurisdiction of the Judicial Circuit of the State of Florida for the appointment of a receiver to manage its affairs of the dissolved Association and to manage the Common Areas, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties, including but not limited to the continued operation and maintenance of the storm water management facilities.

11. Duration. The Association shall have perpetual existence.

12. Amendments.

12.1. General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to these Articles shall affect the rights of Declarant unless such amendment receives the prior written consent of Declarant, which may be withheld for any reason whatsoever. No amendment shall be effective until it is recorded in the Public Records.

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12.2. Amendments Prior to the Turnover Date. Prior to the Turnover Date, Declarant shall have the right to amend these Articles as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Declarant's right to amend under this Section is to be construed as broadly as possible. In the event that the Association shall desire to amend these Articles prior to the Turnover Date, the Association must first obtain Declarant's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Declarant may be adopted by the Association pursuant to the requirements for amendments from and after the Turnover Date. Thereafter, Declarant shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

12.3. Amendments From and After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, these Articles may be amended with the approval of (i) two-thirds (66 2/3%) of the Board; and (ii) seventy-five percent (75%) of all of the votes in the Association. Notwithstanding the foregoing, after the Turnover Date these Articles may be amended to change the number of directors on the Board by two-thirds percent (66 2/3%) of the Board acting alone. Such change shall not require the approval of the Members. Any change in the number of directors shall not take effect until the next Annual Members Meeting.

13. Limitations.

13.1. Declarations is Paramount. No amendment may be made to these Articles which shall in any manner reduce, amend, affect or modify the terms, conditions, provisions, rights and obligations set forth in the Declaration.

13.2. Rights of Declarant. There shall be no amendment to these Articles which shall abridge, reduce, amend, effect or modify the rights of Declarant.

14. Incorporator.

The name and address of the Incorporator of this corporation is:

ROBERT V. PETERSON  
5108 S. W. 12<sup>th</sup> Place  
Cape Coral, FL 33914

15. Officers.

The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall from time to time determine. The names and addresses of the Officers who shall serve until their successors are elected by the Board are as follows:

President: Robert V. Peterson

Vice President: Lawrence J. Pitoni

Secretary: Kathleen M. Peterson

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Treasurer: Kathleen M. Peterson

16. Indemnification of Officers and Directors. The Association shall and does hereby indemnify and hold harmless every Director and every Officer, their heirs, executors and administrators, against all loss, cost and expenses reasonably incurred in connection with any action, suit or proceeding to which such Director or Officer may be made a party by reason of being or having been a Director or Officer of the Association, including reasonable counsel fees and paraprofessional fees at all levels of proceeding. This indemnification shall not apply to matters wherein the Director or Officer shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other rights to which such Director or Officers may be entitled.

17. Director Transactions. No contract or transaction between the Association and one (1) or more of its Directors or Officers or Declarant, or between the Association and any other corporation, partnership, association, or other organization in which one (1) or more of its Officers or Directors are officers, directors or employees or otherwise interested shall be invalid, void or voidable solely for this reason, or solely because the Officer or Director is present at, or participates in, meetings of the Board thereof which authorized the contract or transaction, or solely because said Officers' or Directors' votes are counted for such purpose. No Director or Officer of the Association shall incur liability by reason of the fact that such Director or Officer may be interested in any such contract or transaction. Interested Directors shall disclose the general nature of their interest and may be counted in determining the presence of a quorum at a meeting of the Board which authorized the contract or transaction.

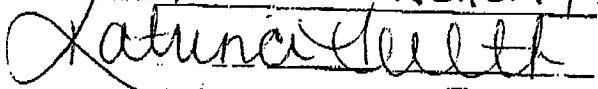
IN WITNESS WHEREOF, for the purpose of forming this corporation under the Laws of the State of Florida, the undersigned, being the Incorporator of this Association, has executed these Articles of Incorporation as of this 26<sup>th</sup> day of March, 2003.

## WITNESSES:



Print name:

JANE YEAGER CHEFFY



Print name:

KATRINA FURTH



ROBERT V. PETERSON, INCORPORATOR

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STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of March 2003 by ROBERT V. PETERSON, who is personally known to me OR has provided a Florida Driver License as identification..

My commission expires:



Jane Yeager Cheffy  
Commission #DD191998  
Expires: Mar 10, 2007  
Bonded Thru  
Atlantic Bonding Co., Inc.

  
NOTARY PUBLIC, State of Florida at Large

Print name: JANE YEAGER CHEFFY

#### ACCEPTANCE BY REGISTERED AGENT

I, having been named to accept service of process for the above-stated corporation at the place designated in this certificate, hereby agree to act in this capacity, and I am familiar with, and accept, the obligations of this position and further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

Dated this 26<sup>th</sup> day of March, 2003.

  
JANE YEAGER CHEFFY, Registered Agent

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